

COPYRIGHT ROYALTY TRIBUNAL

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In the Matter of: :

CABLE COPYRIGHT ROYALTY :

DOCKET NO. CRT 89-2-87CD

DISTRIBUTION PROCEEDINGS - :

PHASE II :

----- X

(This volume contains pages 1 through 149)

Room 458
1111 20th Street, N.W.
Washington, D.C.

Wednesday, October 25, 1989

The hearing in the above-entitled matter was
convened pursuant to Notice, at 10:00 a.m.

BEFORE:

MARTO F. AGUERO Chairman

J.C. ARGETSINGER Commissioner

ROBERT CASSLER General Counsel

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C O N T E N T S

<u>WITNESS</u>	<u>EXAMINATION</u>					<u>TRIBUNAL</u>
	<u>VOIR</u> <u>DIRE</u>	<u>DIR</u>	<u>CROSS</u>	<u>REDIR</u>	<u>RECR</u>	
Dr. David W. Clark						
By Mr. Gottfried	--	8	--	70	--	--
By Mr. Kennedy	10	--	33	--	--	--
By Com. Argetsinger	--	--	--	--	--	30
By Ch. Agüero	--	--	--	--	--	31
Donald MacAllister						
By Mr. Kennedy	--	78,86	--	--	--	--
By Mr. Midlen	--	--	91	--	--	--
Thomas A. Larson						
By Mr. Kennedy	--	104,108	--	144	--	--
By Mr. Harrington	107	--	108	--	147	--

E X H I B I T S

<u>NUMBER</u>	<u>FOR</u> <u>IDENTIFICATION</u>	<u>IN</u> <u>EVIDENCE</u>
<u>Settling Devotional Claimants</u>		
1, 2 and 3	--	70
1-X (Distant Systems 86 & 37)	110	--

P R O C E E D I N G S

(10:00 a.m.)

CHAIRMAN AGUERO: Good morning. Today, October 26, 1989, the CRT will begin the 1987 Phase II Cable Royalty Distribution Proceedings with the Settling Devotional Claimants and the Christian Television Corporation, CRT Docket Number 89-2-87CD.

Before we begin the proceedings, the Tribunal wishes to know if any of the parties have any preliminary statement.

MR. GOTTFRIED: Yes, Mr. Chairman, we do. Should we begin?

CHAIRMAN AGUERO: Yes, sir.

MR. GOTTFRIED: Commissioner Aguero, Commissioner Argetsinger, it's always a pleasure to appear before this body, and indeed an honor to appear before this body on behalf of the Settling Devotional Claimants.

I wish I could tell you that we didn't need to be here because we had followed the Tribunal's directives to settle these disputes and not to have hearings. We've done our best.

This is no longer a category about which Mr. Bechtel used to be able to say "It's really just three people". As you can see, the category now encompasses large claimants and small claimants. It encompasses the three

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1 claimants who you used to hear from -- CBN, Old Time Gospel
2 Hour, and an entity that now is known as the Inspirational
3 Network and used to be known as PTL.

4 It also encompasses now persons with whom we've
5 been able to settle, and those include large claimants who
6 appear in the Nielsen Report, such as Oral Roberts and In
7 Touch Ministry, and small claimants who don't appear in the
8 Nielsen Report, such as HAB which represents a whole array
9 of stations such as WCLF, a whole array of stations and they
10 have accepted our settlement offer as reasonable.

11 Multimedia has accepted our offer as reasonable.
12 One claimant has not accepted our settlement offer, and that
13 is the Christian Television Corporation.

14 We understand the Tribunal's position that no one
15 will be punished for going to hearing, that the Tribunal's
16 task is to objectively award each claimant what it is
17 entitled, and we don't ask that this claimant be punished
18 for going to hearing. On the other hand, we believe that
19 one should not get a bonus for effort or for appearing in
20 this Tribunal.

21 As the Tribunal has said in its earlier decisions,
22 its task is to look at the evidence and to decide what each
23 claimant is entitled to, and that is what we are asking the
24 Tribunal to do in this hearing.

25 The evidence that we will present this morning

1 from Dr. Clark is based on the Special Nielsen Study that
2 the Tribunal has accepted as the starting point in Phase II
3 proceedings.

4 As I'm sure that the Commissioners recall, we
5 ourselves have had questions about the validity of that
6 methodology, but the Tribunal has repeatedly said that that
7 will be the starting point, and we will play by the rules
8 that the Tribunal has set.

9 I think that the Tribunal will hear evidence or claims
10 about what are called "unclaimed" funds. I would just
11 remind the Tribunal of its statement in the 1983 proceeding
12 that "in Phase II the Tribunal only attempts to appraise the
13 relative worth of the works represented by the claimants
14 before it. In making such an assessment, we eliminated from
15 consideration the Nielsen data for unclaimed works and
16 arrived at a new starting off point. We then made our
17 comparative analysis based on the entire record, as we have
18 done in every distributive proceeding".

19 Dr. Clark will present evidence that the starting
20 off point, as the Tribunal defined it in that quotation, is
21 that the settling claimants would get all the funds, and
22 that the Christian Television Corporation would get zero.
23 It chose a Nielsen rating.

24 It seems to us that the burden then shifts to the
25 Christian Television Corporation, to show some reason why

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1 MR. KENNEDY: Just one. I appreciate being able
2 to come here before the Tribunal and the other claimants.
3 We are not looking for a lion's share of the profits or the
4 unclaimed funds or whatever is available.

5 We are seeking for the Tribunal's distribution of
6 a just award to us and to the Settling Devotional Claimants,
7 and we will abide by whatever you decide. Thank you.

8 CHAIRMAN AGUERO: Will you call your first
9 witness, please?

10 MR. GOTTFRIED: Yes. I call Dr. David Clark.

11 CHAIRMAN AGUERO: Dr. Clark, it's nice to see you
12 here again.

13 Whereupon,

14 DAVID W. CLARK

15 was called as a witness and, having first been duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. GOTTFRIED:

19 Q Could you state your name, sir, for the record?

20 A My name is David W. Clark.

21 Q And what is your current position, Dr. Clark?

22 A I'm currently Dean of the College of Communication
23 at CBN University.

24 Q Is that the same position you held the last time
25 that you appeared before this Tribunal?

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1 that is an inaccurate measure of its value, and we will
2 concede, as we have -- Dr. Clark will testify -- that they
3 are entitled to something because they have presented
4 evidence that they were carried as a distant signal -- to
5 something -- but in our view, only to a nominal award
6 because the evidence shows nothing more than an entitlement
7 to a nominal award.

8 The objective methodology that Christian
9 Television Corporation has presented to this Tribunal has
10 been rejected time and time again by the Tribunal, most
11 recently in the 1983 case where you said "We again reject
12 any time-based formula for, as we have said, they only serve
13 to distort any marketplace analysis". But even if the
14 Tribunal were to adopt a time-based formula, I think we will
15 show you that there are grave distortions in the evidence
16 that will be presented by the Christian Television
17 Corporation, and that in any case, on rebuttal, even using
18 their methodology, it would only warrant a nominal award.

19 Everything has to be done relative. There is
20 nothing in their case that shows their relative value as
21 compared to the Settling Devotional Claimants, and all the
22 objective evidence that takes into consideration the issue
23 before this Tribunal, the relative awards, shows that they
24 are entitled to only a nominal award. Thank you.

25 CHAIRMAN AGUERO: Hr. Kennedy, any comments?

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1 A No. The last time I appeared before this
2 Tribunal, I was a Vice President of Marketing for the
3 Christian Broadcasting Network.

4 Q Just for the Tribunal's information, why don't you
5 tell us what you've done since the last time that you
6 appeared before this Tribunal.

7 A Well, I had an unusual opportunity given me by the
8 Federal Bankruptcy Court, to be the Trustee, the bankruptcy
9 Trustee at the PTL, also known as Heritage Ministries, and I
10 served in that position from November of 1987 to
11 approximately June 1, 1988.

12 Q So, that's for part of the year that's at issue in
13 this case?

14 A Yes, that was for the end of the year.

15 Q Just briefly, your educational background?

16 A I have an undergraduate degree from Evangel
17 College in Springfield, Missouri and I have a graduate
18 degree in theology from Northern Baptist Seminary, and I
19 have a Master's Degree and a Ph.D. in communication research
20 from the University of Iowa, and that work focused on media
21 research and policy issues related to the mass media.

22 Q Did your training in the Ph.D. program include
23 communication survey research?

24 A Yes, it did, extensive survey research methodology
25 and multi-variant statistical analysis of survey data.

1 MR. GOTTFRIED: Mr. Commissioners, I would move to
2 qualify Dr. Clark as an expert in evaluating communication
3 survey research and television ratings data.

4 CHAIRMAN AGUERO: Mr. Kennedy, any voir dire of
5 Dr. Clark?

6 MR. KENNEDY: Yes, I have some.

7 VOIR DIRE

8 BY MR. KENNEDY:

9 Q Dr. Clark, I never received an affidavit of your
10 testimony from the Settling Claimants written direct case.
11 Did you write the document that is known as the Direct Case?

12 A I prepared it with counsel's help.

13 Q Did you write the first draft of this document?

14 A No.

15 Q So, is it fair to say that you were presented with
16 this document, you reviewed it --

17 A I reviewed it, made changes to it, and approved
18 it.

19 Q Were there any substantial changes that you made?
20 You said you made changes.

21 A No, they were not substantial changes; they were
22 minor changes.

23 Q What kind of changes are you talking about?

24 A Wording, stylistic issues, that kind of thing.

25 Q Exhibit Number 2 in the direct case that you

1 sponsor, which is the Settling Devotional Claimants' Nielsen
2 results, did you prepare that directly?

3 A No. I reviewed the computer printouts for that,
4 and know this to be what was on the computer printouts from
5 the Nielsen Study.

6 Q Was it prepared by counsel, as far as the way it
7 is worded here in Exhibit Number 2?

8 A Yes.

9 Q And you approved that?

10 A Yes.

11 Q Did you review the source documents from which
12 that exhibit was taken?

13 A I reviewed the computer printouts from the Nielsen
14 Company.

15 Q Does that computer printout list the stations and
16 the cable systems, distant cable systems?

17 A The computer printout document I saw and reviewed,
18 lists the various programs and the total number of viewing
19 hours of those programs.

20 Q But there was no list of the cable systems?

21 A There was a list of -- an extensive list of
22 stations, as part of that document. I reviewed the summary
23 data of that.

24 Q I understand there were stations, but did it show
25 cable systems and the number of subscribers and the fees

1 generated?

2 MR. GOTTFRIED: Mr. Commissioners, I believe this
3 is just testimony on voir dire, on his qualifications.

4 CHAIRMAN AGUERO: It's supposed to be voir dire,
5 Mr. Kennedy, on his qualifications.

6 MR. KENNEDY: I'm trying to -- on expertise?

7 CHAIRMAN AGUERO: Yes. It is relevant to voir
8 dire. Thank you.

9 BY MR. KENNEDY:

10 Q Okay. The question was, does that study include
11 cable systems which list subscribers and fees generated?

12 A The study I looked at does not. The part I looked
13 at does not. I looked at summary data. I was looking
14 essentially for viewing hours and quarterhours that were
15 summarized in that study, and these were summarized against
16 the various devotional entities and their programs.

17 Q Okay. Dr. Clark, are you involved with the
18 Marketing Department at CBN now?

19 A Not directly, no.

20 Q When you were Vice President of Marketing for CBN,
21 what were your tasks?

22 A Well, I ran an in-house advertising agency called
23 Victor King, which was a full-service agency, and part of
24 that was a research services group which provided research
25 services to the entire ministry.

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1 Q And did you market programs for CBN?

2 A Yes.

3 Q What programs are you talking about?

4 A We marketed domestically and internationally,
5 Superbook, Flying House, Another Life, and some other
6 programs that we had.

7 Q Okay. Let's talk about domestic. Did you market
8 the 700 Club?

9 A Yes. We use the term generally for the 700 Club,
10 syndicated.

11 Q What is the difference? I'm not sure I
12 understand.

13 A I'm not sure there is, but essentially the term
14 refers to distributing the program as widely as possible, on
15 stations throughout the country that would carry it.

16 Q Okay. Did part of your job also include
17 purchasing air time on broadcast stations, to put the 700
18 Club on-the-air?

19 A That was in my area of responsibility. I didn't
20 personally do that, though; I had people or media buying
21 groups that did that.

22 Q Okay. Were you overseeing that particular group?

23 A Yes.

24 Q And of the 118 or 119 stations listed in the
25 Nielsen survey, did the 700 Club buy time on those stations?

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1 MR. GOTTFRIED: Again, I believe this is going to
2 the merits of the case and not to the expertise of Dr. Clark
3 as a witness, and we would object.

4 CHAIRMAN AGUERO: Any comment?

5 MR. KENNEDY: No, I have no comment on that. I'll
6 cover it later.

7 BY MR. KENNEDY:

8 Q Okay. The detailed study Mr. Washington did for
9 the religious program section of the Special Nielsen Study
10 shows that the 700 Club was carried by 21 stations of the
11 118 of 119 stations.

12 In past proceedings, you have been critical of the
13 MPAA-Nielsen study. Do you feel that it's still -- and I'm
14 quoting your statement from past proceedings --
15 substantially understates viewing of devotional program --

16 CHAIRMAN AGUERO: Mr. Kennedy, I think that you
17 are already now in cross-examination.

18 MR. KENNEDY: Perhaps you are right. Let me check
19 and see if I have any other voir dire.

20 CHAIRMAN AGUERO: Do you have anymore voir dire,
21 Mr. Kennedy?

22 MR. KENNEDY: I have just a couple.

23 BY MR. KENNEDY:

24 Q Your written testimony states you have significant
25 experience in evaluation of communications survey research

1 and television ratings data. Can you tell me what survey
2 companies you have used in the past?

3 A Yes. We subscribe to Nielsen, Arbitron and, in
4 addition to that, have at various and sundry times used
5 several independent firms that have done special proprietary
6 projects for us, which we don't release to the public but
7 which are useful to us, and -- but we're regular subscribers
8 to Arbitron and Nielsen.

9 Q Okay. Have you ever marketed anything for the PTL
10 Network, programs for the PTL Network?

11 A Not really. That wasn't my responsibility
12 directly, but it depends on how you define the role of a
13 federal bankruptcy Trustee. I saw my job as trying to keep
14 the enterprise alive. In that general sense, I guess you
15 could say that I was familiar and to some extent
16 responsible, but I was much less involved with PTL, Mr.
17 Kennedy, in that aspect of it, than I would have been, say,
18 with the 700 Club.

19 Q Are you familiar with the other programs that are
20 represented here -- Old Time Gospel Hour --

21 A Yes. Yes, in general, I am.

22 Q Dr. Charles Stanley's In Touch Ministry?

23 A Yes.

24 Q Now, I notice that in some of the Nielsen ROSP
25 reports, that In Touch Ministry seems to be listed with CBN.

1 Is it a part of CBN?

2 A No, it's not.

3 Q Does CBN have a program called In Touch?

4 A No.

5 Q Do you watch regularly any of the programs
6 mentioned in your written testimony?

7 A I think the answer to that -- how would you define
8 regularly?

9 Q Twice a week, once a week.

10 A Enough to note any changes in format and sort of
11 what's happening in the style of those programs.

12 Q For example, you've watched Oral Roberts?

13 A Yes.

14 Q You know basically what the format of that program
15 is?

16 A Yes.

17 Q What about -- your written testimony mentions
18 Gospel Singing Jubilee.

19 A Yes.

20 Q California Tonight.

21 A California Tonight I've seen on maybe half a dozen
22 occasions when I was on the West Coast.

23 Q How about New York Tonight?

24 A I have not seen New York Tonight.

25 Q You have not seen that one. How about Double

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1 Image?

2 A No.

3 Q Okay. Are all the programs that you mention in
4 your written testimony, on CBN Cable?

5 A No.

6 Q So, CBN Cable only represents what portion of
7 those programs?

8 MR. GOTTFRIED: Again, this is going pretty far
9 afield for voir dire testimony.

10 MR. KENNEDY: Not really because what I'm trying
11 to establish here -- he's a witness for the entire group,
12 and part of that group includes these programs. And I'm
13 trying to discover whether or not he is familiar with these
14 programs or not.

15 MR. GOTTFRIED: I believe that I've asked that he
16 be qualified as an expert in evaluating communications
17 survey research and television ratings data.

18 CHAIRMAN AGUERO: We realize that. You may
19 continue, sir.

20 THE WITNESS: The previous question was of these
21 programs, which are on the CBN Cable Network.

22 MR. KENNEDY: That's correct.

23 THE WITNESS: The only one that I know to be on
24 there is In Touch Ministry, Charles Stanley and, of course,
25 the 700 Club.

1 BY MR. KENNEDY:

2 Q Your testimony refers, I believe, in Exhibit 3, of
3 some statements that you made in previous proceedings, pages
4 5 through 7, and I believe on page 7 of that you mention a
5 video tape sampling. Do you have that with you, or will
6 that be shown?

7 A No, I don't have that with me. That was a tape
8 which was prepared in the past to give the Commission an
9 idea of the kinds of programs that were included here.

10 MR. KENNEDY: That's all the questions I have for
11 voir dire. Thank you.

12 CHAIRMAN AGUERO: * Commissioner?

13 COMMISSIONER ARGETSINGER: No.

14 MR. GOTTFRIED: My motion is pending to -- and I
15 don't know whether there was an objection to admitting Dr.
16 Clark as an expert in the areas --

17 CHAIRMAN AGUERO: Dr. Clark is admitted as an
18 expert, sir. Thank you very much.

19 DIRECT EXAMINATION (Resumed)

20 BY MR. GOTTFRIED:

21 Q Dr. Clark, you're here on behalf of a group of
22 claimants called the Settling Devotional Claimants. Can you
23 explain briefly to the Tribunal who those claimants are?

24 A Well, these are primarily three groups -- the 700
25 Club, the Old Time Gospel Hour, and what was known as the

1 PTL Club -- who are devotionals who have filed for a portion
2 of the monies generated by these fees, and in addition to
3 that another group has been -- we have made a settlement
4 with or they have made a settlement with -- Expect a
5 Miracle, Richard Roberts, and In Touch Ministries.

6 Q Getting back to the claimants themselves, when you
7 say the 700 Club, do you mean the Christian Broadcasting
8 Network?

9 A Yes, CBN and the program itself.

10 Q And does the CBN produce any programs other than
11 the 700 Club which is shown on distant signals?

12 A Yes. We produce some programs which are mentioned
13 here, which include Superbook, Flying House and for a number
14 of years we produced Another Life, which was a daily soap
15 opera.

16 Q Did you produce that in 1987?

17 A No.

18 Q Was it distributed in 1987?

19 A Yes, it was being distributed in 1987.

20 Q Now, the 700 Club I believe the Commissioners are
21 familiar with from earlier years. Could you just briefly
22 describe the other three programs?

23 A The other programs, Superbook and Flying House,
24 are animated Bible stories, 102 half-hours of animated Bible
25 stories, which are aired on stations and on the CBN Cable

1 Network, but they are also --

2 COMMISSIONER ARGETSINGER: Excuse me, Dr. Clark,
3 what was that third one?

4 THE WITNESS: Superbook and Flying House. They are
5 two different series of animated Bible stories.

6 CHAIRMAN AGUERO: Do you mention this in your
7 testimony, Dr. Clark?

8 THE WITNESS: Yes.

9 CHAIRMAN AGUERO: In what part, what page?

10 THE WITNESS: Page 5.

11 CHAIRMAN AGUERO: Okay. Thank you very much.

12 COMMISSIONER ARGETSINGER: Dr. Clark, how many
13 programs would you say roughly, you represent? How many
14 different individual programs, with all of the Settling
15 Claimants? We're talking about a number of them.

16 THE WITNESS: Yes. Well, let me go through here. The
17 700 Club -- it would be in addition to the 700 Club--
18 Superbook, Flying House and Another Life. The Old Time
19 Gospel Hour is essentially a Sunday program, once-a-week
20 program. The PTL Club was a daily program, an hour a day.
21 Expect a Miracle is a weekend program by the Oral Roberts
22 Ministry, and Richard Roberts is a daily one-hour program, a
23 variety program. And then In Touch Ministries is a weekend
24 program with Dr. Charles Stanley, essentially a church
25 service.

1 COMMISSIONER ARGETSINGER: Now, when you say a
2 weekend, you mean --

3 THE WITNESS: A Sunday. As is the Old Time Gospel
4 Hour. Those are Sunday programs, primarily.

5 CHAIRMAN AGUERO: Are there any repeats on those
6 ones that run for 206 days a year? Like Oral Roberts or his
7 son --

8 THE WITNESS: No. There may be -- virtually all
9 original. It's not uncommon on, for example, Christmas
10 week, to do some repeat programs.

11 CHAIRMAN AGUERO: From previous years?

12 THE WITNESS: Usually previous months.

13 CHAIRMAN AGUERO: Previous months.

14 THE WITNESS: Yes, they age pretty quickly. But,
15 typically, in the course of a year, most of these daily
16 programs would be doing 250 or 255 new programs every single
17 year. They are all fresh programs.

18 COMMISSIONER ARGETSINGER: Then, of course,
19 there's Multimedia, First Century and NAB.

20 THE WITNESS: Yes, yes, the Gospel Singing Jubilee
21 and others.

22 COMMISSIONER ARGETSINGER: How many programs would
23 you say?

24 THE WITNESS: Beg pardon?

25 COMMISSIONER ARGETSINGER: Any rough idea how many

1 programs?

2 THE WITNESS: Well, California Tonight, New Mexico
3 Tonight, New York Tonight.

4 CHAIRMAN AGUERO: Double Image.

5 THE WITNESS: Yes, Double Image -- those Tonight
6 programs are daily programs that are aired.

7 CHAIRMAN AGUERO: From Monday to Friday.

8 THE WITNESS: Yes, from Monday through Friday, and
9 I'm sorry to say I don't know about -

10 CHAIRMAN AGUERO: All originals.

11 THE WITNESS: All originals.

12 BY MR. GOTTFRIED:

13 Q Dr. Clark, to follow up on the Commissioners'
14 questions, are you aware of what NAB has made a claim for?

15 A Yes.

16 Q And what is that?

17 A Well, NAB has made a claim in this procedure -- if
18 I could just review my notes here -- (perusing document).

19 Q Could I direct your attention to the bottom of
20 page 3, if you need to refresh your recollection.

21 A Yes, okay. I'm sorry, it's been a while since
22 I've dealt with this, but the NAB has made a claim on behalf
23 of stations that are not represented in this proceeding by
24 those who have filed previously.

25 Q Do you know how many programs would be produced by

1 those local stations?

2 A An exact number I couldn't give you, but there's a
3 good deal of programming done by those local stations.

4 Q Would that be local church services?

5 A Local church services. In some cases, it might be
6 a Christian talk show kind of program.

7 Q Is it fair to say that there would be hundreds of
8 programs produced by those stations, or tens? I don't know.

9 A Yes. I think inasmuch -- there's a good deal of
10 local programming, and there could well be many, many
11 programs, into the hundreds I would think.

12 Q And there may be stations such as WCLF included in
13 that group?

14 A There could be stations like CLF in that group, I
15 think.

16 Q Dr. Clark, you have previously testified in this
17 proceeding, isn't that correct?

18 A Yes, I have.

19 Q And you urged the Tribunal to adopt a time-based
20 fee-generation methodology for making awards, is that
21 correct?

22 A I did -- I did urge that, and continue to see that
23 as a possible best formula. However, I think we have to
24 recognize that a decision has been made to use Nielsen as a
25 starting place, and -- well, there generally, I believe, are

1 problems in the Nielsen surveys, in representing all
2 devotional programming, and I don't have to go into those,
3 but I think, in my opinion, devotional programs are under-
4 represented in the Nielsen process, period.

5 I don't see any reason in terms of methodology,
6 why any one devotional claimant would be more under-
7 represented than others. In other words, the methodological
8 problems are such that as a group, in my opinion, it tends
9 to undervalue and underrate devotional programming.

10 Q What is the methodology that you are urging the
11 Tribunal to adopt in this Phase II proceeding, Dr. Clark?

12 A Well, I think that the Tribunal has made a
13 decision, which is to use the Nielsen data as a basis for
14 settlement, and I think that's where you have to begin at
15 this point.

16 If the fee-based issue could be raised in a full-
17 blown hearing again, I think there could be some value in
18 the time-based --

19 Q Do we have an understanding of how the Phase I
20 funds were distributed in the most recent proceeding, what
21 the starting point in those awards was?

22 A Yes.

23 Q And what was that?

24 A Well, the starting point basically was as
25 indicated in Exhibit 2 I think it is.

1 Q Now, when you talk about Nielsen ratings, are you
2 talking about a special Nielsen Study done by MPAA?

3 A Yes.

4 Q And that focuses on distant signal viewing, is
5 that correct?

6 A Yes, it focuses on recarriage on stations, of
7 distant signals, specifically.

8 Q Turning your attention to Settling Devotional
9 Claimants' Exhibit Number 2, can you explain to the Tribunal
10 what that exhibit shows, Dr. Clark?

11 A The Exhibit Number 2 is a -- is data lifted from
12 the Nielsen Study summary, summary data section, which sums
13 the total number of hours in the first column, total number
14 of viewing hours of the 700 Club, Old Time Gospel Hour and
15 so forth, and is a summary then of -- from the special study
16 looking at broadcasts that had been recarried by local
17 stations on 119 stations. This is not -- it should be
18 pointed out, this is not a universe of all the stations,
19 it's the 119 top stations and, in fact, about half of this
20 data of recarriage was generated from just the major what
21 are called Superstations, such as WOR, WTBS and so forth.

22 COMMISSIONER ARGETSINGER: Dr. Clark, do I
23 understand this is the Special Survey that Nielsen did for
24 MPAA and had we had a Phase I this no doubt would have been
25 presented?

1 THE WITNESS: Yes.

2 COMMISSIONER ARGETSINGER: And you have taken
3 these figures out of that?

4 THE WITNESS: That's right.

5 COMMISSIONER ARGETSINGER: And, of course, you
6 don't show "unclaimed" devotionals out of the figure of 4.6
7 million?

8 THE WITNESS: No, we don't.

9 COMMISSIONER ARGETSINGER: And you also don't show
10 Multimedia, WAB or First Century?

11 THE WITNESS: That's correct.

12 COMMISSIONER ARGETSINGER: And if you had included
13 Multimedia, WAB, First Century, I assume the 4.6 would be
14 somewhat larger?

15 THE WITNESS: Somewhat. First Century, I believe,
16 is in there, is it not?

17 MR. GOTTFRIED: For the Tribunal's clarification,
18 all the Claimants that we represent that do appear in the
19 Nielsen Study, are included in Table 2. Those that do not
20 appear --

21 CHAIRMAN AGUERO: Including Multimedia and WAB?

22 MR. GOTTFRIED: That's correct. Well, Gospel
23 Singing Jubilee does not appear on any of the 119 stations.

24 COMMISSIONER ARGETSINGER: And whose program is
25 that again, please?

1 MR. GOTTFRIED: Multimedia. NAB -- we have not
2 been provided with the names of any programs that we've been
3 able to find in the Nielsen Study.

4 CHAIRMAN AGUERO: Dr. Clark said a little while
5 ago -- I mean, according to what I hear -- that NAB may have
6 over a hundred programs.

7 MR. GOTTFRIED: That's correct, and we have not
8 been given the names of any --

9 CHAIRMAN AGUERO: No names of all the NAB
10 programs?

11 MR. GOTTFRIED: -- that we know to appear in the
12 Nielsen Study.

13 COMMISSIONER ARGETSINGER: Mr. Chairman, if we
14 could have the witness comment on that because I'm concerned
15 about testimony from the attorneys.

16 Dr. Clark, what do you know about that?

17 THE WITNESS: What I know -- my understanding is,
18 at this point, that the NAB programs that we're talking
19 about are locally produced programs, and there are such a
20 number of them, a plethora of them, and since names were not
21 provided, they couldn't be tracked in the study.

22 COMMISSIONER ARGETSINGER: But, Dr. Clark, the
23 4.673 is the total number that you're claiming, is that
24 correct?

25 THE WITNESS: Yes, that is correct.

1 COMMISSIONER ARGETSINGER: But that does not
2 include the unclaimed portion which can only be awarded in
3 Phase I.

4 THE WITNESS: That does not include the unclaimed
5 portion.

6 COMMISSIONER ARGETSINGER: All right.

7 BY MR. GOTTFRIED:

8 Q Can you explain to the Tribunal why you have not
9 included the unclaimed portion?

10 A Yes. The Tribunal's ground rules, as I understand
11 them, are predicated on the important assumption that those
12 claimants who come forward and make a claim and substantiate
13 that claim, are the ones who will receive the settlement of
14 the funds available. It's not the -- as I understand it,
15 it's not the Tribunal's responsibility to seek out those who
16 have not made claims. So, therefore, the settlement
17 reflects those who have made claims.

18 COMMISSIONER ARGETSINGER: Dr. Clark, again, to
19 clear this up in my mind, if we had been presented by HPAA,
20 the several -- 6,000 items that are shown, we could have
21 gone through and lifted these figures and come up with--
22 and that is the methodology that was used?

23 THE WITNESS: Yes.

24 MR. GOTTFRIED: It's not in our direct case. If
25 the Tribunal wishes to have it as an exhibit, I can place

1 into evidence the Special Report for Religious Copyright
2 Claimants for calendar year 1987.

3 COMMISSIONER ARGETSINGER: If, in fact, Dr. Clark,
4 that's your testimony, that you did take that out, I suppose
5 it's unnecessary to have that in evidence.

6 MR. GOTTFRIED: Just for the Tribunal's
7 information, this was provided to Mr. Kennedy, so he's had
8 the opportunity to review it and to use it for whatever
9 basis he wishes, on cross-examination. It was provided in
10 discovery.

11 COMMISSIONER ARGETSINGER: All right.

12 CHAIRMAN AGUERO: Let's proceed, sir.

13 BY MR. GOTTFRIED:

14 Q I believe you said that the Christian Television
15 Corporation does not appear -- none of its programs, to the
16 best of your knowledge, appear on any of those 119 stations?

17 A Yes. I was not able to find any.

18 Q And, therefore, what would the starting point be,
19 in your view, for awards in this proceeding?

20 A Well, according to the procedure that's been
21 followed, since they don't appear in this benchmark study,
22 if you will, they wouldn't be entitled to settlement at all.

23 Q Dr. Clark, are you proposing to this Tribunal that
24 the Christian Television Corporation receive no award?

25 A No. I think we have -- we recognize that there is

1 some recarriage of their programs, but in the universe of
2 recarriage of programs, theirs is a relatively small portion
3 and, therefore, their fee should reflect the relative size
4 of their audience and the recarriage of their programs.

5 Q Now, when you say relatively small, what do you
6 mean, Dr. Clark?

7 A Well, my understanding is that CTC is carried on
8 approximately 400,000 cable households, and when you place
9 that in a universe of between 55- and 60 million homes that
10 are on cable in the United States, I think you'd have to
11 agree, that's a relatively small universe of households.

12 Q What are you proposing for the Christian
13 Television Corporation?

14 A What I would propose is that a nominal award of
15 some sort that would acknowledge their -- the fact that they
16 are recarried might be an appropriate award, and I think
17 that the -- you know -- what is nominal -- \$100 or \$1,000
18 or something like that might be appropriate.

19 MR. GOTTFRIED: I have no further questions.

20 CHAIRMAN AGUERO: Commissioner?

21 EXAMINATION BY THE TRIBUNAL

22 BY COMMISSIONER ARGETSINGER:

23 Q Dr. Clark, you mentioned that CTC is carried in
24 400 -- picked up in 400,000 households. Do you have a
25 comparable figure for your claimants?

1 A I don't have that. I certainly could get that for
2 you, but I haven't done that. I can tell you, for example,
3 that the 700 Club is syndicated on 180 stations in the
4 United States, and many of the 119 stations that were in
5 this survey are included, or at least some are included, and
6 I think we'd have to go through and work on every one of
7 these programs to come up with that universe but, basically,
8 I think I can tell you that the 700 Club is on the CBN
9 Network which, itself, has 49 million homes, but in addition
10 to that -- you see, that doesn't give you the full picture
11 because, in addition to that network on which it's carried,
12 which is really not -- that's technically not a rebroadcast
13 anyway, of a distant signal.

14 So, what we have to look at are all the stations
15 out there, such as WOR, which carry the 700 Club, which are
16 major stations that are picked up by cable systems across
17 the country, and that is, indeed, a complex task, I think,
18 as you can see. So, Mr. Argetsinger, I don't have at-hand a
19 number for you, except to say that the 4,673,000 that's
20 represented here, represents roughly 40 percent of all the
21 recarriage of these kinds of programming.

22 BY CHAIRMAN AGUERO:

23 Q I'm going to take the liberty of asking you one
24 question. You may answer or you may not because this may
25 cross the confidentiality agreement between the Devotional

1 Claimants in 1986.

2 The amount in that year was below \$100 or above
3 \$100?

4 MR. MIDLEN: Objection. That crosses the limit
5 here.

6 CHAIRMAN AGUERO: I know, but I want to know the
7 objection. I accept the objection, sir. Thank you very
8 much.

9 BY CHAIRMAN AGUERO:

10 Q If the amount of money that was in the settlement
11 that CTC received in 1983 was below \$100 or above \$100?

12 MR. GOTTFRIED: That's in the case, so we'll
13 withdraw the objection. Go ahead, Dr. Clark.

14 THE WITNESS: Now, the question, Commissioner
15 Aguero, is --

16 MR. GOTTFRIED: Did we offer more than \$100 to
17 Christian --

18 BY CHAIRMAN AGUERO:

19 Q No. If the settlement in 1983 was above \$100 or
20 below \$100?

21 A It was above \$100.

22 CHAIRMAN AGUERO: Thank you very much.

23 Are you finished, Mr. Gottfried?

24 MR. GOTTFRIED: Finished.

25 CHAIRMAN AGUERO: Mr. Kennedy?

CROSS-EXAMINATION

BY MR. KENNEDY:

Q Dr. Clark, your testimony indicates you have considerable experience in communications research and broadcasting and evaluating communications survey research and television ratings data. Can you tell us what companies you have used in the past, to do data research for you?

A I thought I'd stated earlier that because we subscribe to Nielsen and Arbitron, we have used them primarily and extensively, but not exclusively. They've done some special things for us.

Q Was that primarily in dealing with the 700 Club?

A Yes. As you know, Mr. Kennedy, in order to determine placement of programming and appropriate amounts to be paid and/or received from programming, one has to study the entire rating book in a given market. So, to say that the only thing we looked at would be the Club, I don't think would be quite correct. We've looked at a lot of other programs as well, both devotional and non-devotional.

Q Are you familiar with the Nielsen ROSP --

A Yes.

Q -- report on syndicated programs?

A Yes.

Q And in 1987, where did the 700 Club rank among those programs that are listed in --

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1 MR. GOTTFRIED: I object. This is in the nature
2 of rebuttal and goes beyond the scope of the direct
3 testimony.

4 MR. KENNEDY: What is the nature of rebuttal on
5 that? It's a simple question. Where did you rank?

6 CHAIRMAN AGUERO: Would you repeat the question,
7 sir?

8 MR. KENNEDY: I asked in 1987 where did the 700
9 Club rank among other Devotional Claimants.

10 CHAIRMAN AGUERO: All right. Continue.

11 THE WITNESS: I don't have that report with me. I
12 have seen it, but my -- so, I can't answer exactly, but my
13 recollection is it ranked around eighth or ninth among
14 Devotional Claimants.

15 BY MR. KENNEDY:

16 Q Was it ever number one?

17 A No, it was never number one, but there's a good
18 reason for that, and that is that report reflects only a
19 one-week quarterhour average, it doesn't reflect daily
20 averages, so that Nielsen itself will tell you that for the
21 daily programs mentioned there, an appropriate rating method
22 would be to take that number and multiply it by something a
23 factor of 2.8 to 3.5, and if that were done it would -- I
24 don't know what it would rank number one, but it certainly
25 would be very high on the list.

1 Q Can you provide that 1987 report for us?

2 A I think we can provide that, sure.

3 Q Okay, because I would like to see that.

4 Was it part of your responsibility to keep track
5 of the top ten or fifteen --

6 MR. GOTTFRIED: Can we have a clarification? I'm
7 not putting that into evidence as part of our case, and I
8 don't know where Mr. Kennedy is proposing that it come into
9 evidence.

10 CHAIRMAN AGUERO: Do you propose Dr. Clark to
11 introduce that evidence, and when, sir?

12 MR. KENNEDY: I'd like to have it as soon as I can
13 get it, and it's going to mean -- it's going to bring out
14 some clarification on side of the case, I think.

15 CHAIRMAN AGUERO: Do you have any objection?

16 MR. GOTTFRIED: I have an objection. It's not our
17 responsibility to make Mr. Kennedy's case and to give him
18 information. He's had opportunity in discovery. His case
19 is in the record, and I object to producing anything to make
20 Mr. Kennedy's case-in-chief.

21 CHAIRMAN AGUERO: Do you have any comment, sir?

22 MR. KENNEDY: Yes, I do. We're trying to discover
23 here whether or not the programs that are listed on this
24 Nielsen report have increased or decreased and, if they have
25 decreased in the ratings and in the rankings of markets,

1 then I would say that that would bear on the Tribunal's
2 determination of whether or not they would get a larger
3 portion of the distribution or not.

4 MR. GOTTFRIED: Again, Your Honor, we've made
5 everything available in discovery that's been requested. I
6 don't even believe that we have a 1986 distant signal report
7 that would be --

8 CHAIRMAN AGUERO: '86 or '87?

9 MR. GOTTFRIED: '86 -- that could be used to
10 compare distant signal carriage in '86 with distant signal
11 carriage in '87, but in any case the Nielsen Company sells
12 these materials to anyone who wants to pay for them. I
13 don't have it, and I don't believe it's our obligation to
14 pay for it in order to make Mr. Kennedy's case.

15 MR. KENNEDY: If I provide the information myself,
16 from my office in Clearwater, will that suffice?

17 COMMISSIONER ARGETSINGER: You could bring this up
18 in rebuttal.

19 MR. KENNEDY: In rebuttal? Okay. All right.

20 CHAIRMAN AGUERO: But anyway, the objection is
21 sustained.

22 BY MR. KENNEDY:

23 Q Have you done any marketing for the cable
24 industry?

25 A In general terms, yes. It depends on what you

1 mean by marketing, exactly. What do you mean by that?

2 Q Distribution, trying to get programming on
3 stations.

4 A I think I'd have to answer to that, no. When I
5 said yes, what I meant was, we -- our in-house agency,
6 Victor King, prepared advertising and collateral material
7 for CBW Cable, and they have, as you know, a group of people
8 who do that kind of marketing. I have not personally done
9 that. I've been to the cable conventions. I've certainly
10 talked to many local cable operators, but I personally have
11 not cleared any signals onto systems, if that's what you
12 mean.

13 Q Okay. The Exhibit Number 2, Settling Devotional
14 Claimants' Exhibit Number 2 lists six programs, and I
15 believe it was brought out earlier, these are the only six
16 devotional programs that are listed, that are represented by
17 the Settling Devotional Claimants in the Nielsen Report, is
18 that correct?

19 A Yes, that's correct.

20 Q Okay. What about the other programs. Since CTC
21 is not in the report and these other programs are not in the
22 report, too, are they going to get a zero fee, or are they
23 going to get any kind of a nominal award for their efforts?

24 MR. GOTTFRIED: Object to the question as trying
25 to probe into the terms of confidential settlements among

1 the Settling Devotional Claimants.

2 CHAIRMAN AGUERO: Any comments, Mr. Kennedy?

3 MR. KENNEDY: Yes. I don't see why that would be
4 an objection. We're in exactly the same boat as the rest of
5 those claimants, and all I'm simply asking is, where do they
6 stand? Are they going to receive some kind of an award or
7 not?

8 COMMISSIONER ARGETSINGER: I think the testimony,
9 Dr. Clark -- your testimony indicates that there are other
10 settling parties.

11 THE WITNESS: Yes, there are. These are parties
12 that do appear in this study, unlike CTC.

13 BY MR. KENNEDY:

14 Q They do appear in the study? Is that correct?
15 Because I've gone through the study and I couldn't find
16 them. I found six, but I couldn't --

17 A Well, the three appear in the study, and the
18 others are claimants -- the claimants on Exhibit 2 appear,
19 the viewing hours appear, and then there are some other
20 claimants that do not appear, with which settlement has been
21 made.

22 Q Okay. All right. In your direct case, I did not
23 receive a lot of details, so perhaps you can help me.

24 This Exhibit Number 2 that we have here, and lists
25 the six programs, the number of viewing hours and

1 quarterhours, can you tell me how many distant systems the
2 700 Club was carried on in this report?

3 A No, I can't.

4 Q So, how did you determine the number of total
5 viewing hours, which is 2.3 million?

6 A By looking at the summary data in that report, but
7 I don't have at hand the number of systems that that
8 represents.

9 Q Can you give me an idea how that figure was
10 arrived at? How did they get 2.3 million?

11 A By looking at these 119 stations and systems of
12 80,000 or over that carried these 119 stations.

13 Q Okay. I still don't figure out -- for instance,
14 the 700 Club was -- I have a list here from the report there
15 -- it was on 21 stations.

16 A Of the 119.

17 Q Of the 119.

18 A Right.

19 Q Okay. Now, I show here some hours that the 700
20 Club was shown. Can you tell me if they take the number
21 hours that it's shown during the week times the number of
22 cable households in order to get this figure, or how exactly
23 is that done? I'm not sure.

24 A It's the total number of hours during the course
25 of a week that's recarried on systems of 80,000 or larger.

1 Q So, they take -- for instance, if the 700 Club was
2 on -- how many times a day --

3 A Five times a day -- excuse me -- five times a
4 week.

5 Q -- five times a week, and you take that number
6 times the total number of cable systems, of households?

7 A It would be times the total number of -- I don't
8 know how households figures in here, to be honest with you.

9 Q So, cable subscribers and households basically are
10 the same thing?

11 A Yes.

12 Q Okay. So, you come up with --

13 A So you come up with this number.

14 Q Okay. What about quarterhours, how was that
15 figured?

16 A Quarterhours was the total universe of
17 quarterhours that the Club was carried on these 119
18 stations.

19 Q I don't follow, I'm sorry.

20 A The 21 stations of the 119.

21 Q Can you tell me how that was figured? I think I
22 understand the viewing hours and how that's figured, but I'm
23 not sure I understand how the quarterhours are figured.

24 A My understanding of the quarterhours was, you took
25 the total number of quarterhours, and that would be 20 per

1 week.

2 Q Twenty quarterhours per week.

3 A Per week for the syndication of the program, and
4 you multiply that by the number of recarriages of the
5 program on cable systems over 80,000, to get a net figure of
6 quarterhours.

7 Q So, you're taking a program that airs five times a
8 week, quartering that --

9 A Twenty quarterhours.

10 Q -- would be 20 quarterhours, times what now?

11 A Times the number of stations of the 119 it's on,
12 and then the number of times that's recarried by the systems
13 of 80,000 or more. So, you'd have the stations of the 119
14 that are carrying the 700 Club, and then that would have to
15 be factored by the number of systems that are recarrying the
16 signal as a distant signal, and I don't have that systems
17 number at hand. I'm sorry. I'd have to do a little more
18 work on that.

19 Q Do you have any idea how many distant systems
20 carried Old Time Gospel Hour, in this report?

21 A No.

22 Q How about PTL?

23 A (Shaking head)

24 Q Any of the others?

25 CHAIRMAN AGUERO: Dr. Clark, can you provide the

1 Tribunal with those figures that Mr. Kennedy has asked you?

2 THE WITNESS: Yes, at least what we can learn from
3 this special study --

4 CHAIRMAN AGUERO: With an explanation of the
5 quarterhours and viewing hours, too.

6 THE WITNESS: Yes.

7 MR. GOTTFRIED: Mr. Commissioner, all we can
8 provide is what we have, and I don't think that this Special
9 Study done for us includes that information. It goes
10 station by station, and shows the total number of
11 quarterhours in the six rating periods, and the total number
12 of viewing hours, multiplying the ratings times the
13 quarterhours in those six periods, but it does not list the
14 incidence of carriage as distant signals.

15 Just for the Tribunal's information, information
16 will be provided on rebuttal that it can use to do a
17 relative measure with the Larson Study that Mr. Kennedy has
18 provided, so that the Tribunal will have a way of preparing
19 -- not using just the 119 stations, but using all the
20 stations, the relative percentage of carriage of the
21 Settling Parties as opposed to the -- Mr. Kennedy.

22 CHAIRMAN AGUERO: Thank you very much, Mr.
23 Gottfried.

24 Carry on, Mr. Kennedy.

25 BY MR. KENNEDY:

1 Q Dr. Clark, I'm still searching for information
2 here, I guess, trying to find out the number of Form 3
3 subscribers that carried the 700 Club in 1987. Is there any
4 way of getting that information soon?

5 A I can only provide basically what we have off this
6 Special Study.

7 COMMISSIONER ARGETSINGER: Are you saying that you
8 went through the Special Study and you wrote down those
9 figures and totaled them? Is that how you arrived at this
10 2.3?

11 THE WITNESS: Right.

12 COMMISSIONER ARGETSINGER: But you really can't
13 comment behind that, how Nielsen -- the methodology that
14 Nielsen employed?

15 THE WITNESS: Nielsen, in this study, does not
16 look specifically at each Form 3 system. So, it's difficult
17 to come up with precise figures on recarriage, but the study
18 is an attempt to break that down as best as possible.

19 COMMISSIONER ARGETSINGER: Well, of course, based
20 on the 119 systems.

21 THE WITNESS: No, the 119 stations that it's
22 looking at. It's looking at 119 of the largest stations
23 that are recarried on Form 3 systems. So, it's looking at
24 better programming and making a survey based on their
25 programming in six rating periods for the year.

1 COMMISSIONER ARGETSINGER: But you got these raw
2 figures from the Nielsen --

3 THE WITNESS: Yes, from a summary statement in
4 that study, which was the primary thing I looked at.

5 CHAIRMAN AGUERO: And 21 stations carried the 700
6 Club, out of 119?

7 THE WITNESS: I would need to do some checking on
8 that myself.

9 CHAIRMAN AGUERO: You mentioned before, 21
10 stations out of 119 carried --

11 MR. HARRINGTON: Mr. Chairman, I believe the 21
12 station claim was made by Mr. Kennedy and not by the
13 witness.

14 MR. KENNEDY: Out of the copy that I made of the
15 report there, and I totalled 21 stations for the 700 Club.

16 CHAIRMAN AGUERO: Do you recall if you mentioned
17 the 21 stations, Mr. Clark?

18 THE WITNESS: Yes, I did mention that, but I
19 mentioned that repeating what Mr. Kennedy had said. I need
20 to look at the study again.

21 CHAIRMAN AGUERO: Thank you. Would you proceed,
22 Mr. Kennedy.

23 BY MR. KENNEDY:

24 Q Since we don't know the number of systems this was
25 on in 1987, do you know the number of systems it was on in

1 1986?

2 A When you're asking me --

3 Q Number of distant systems, Form 3 systems.

4 MR. GOTTFRIED: Object that it is irrelevant.
5 We're here to decide what we're entitled to in '87.

6 MR. KENNEDY: What I'm trying to do is try to
7 determine did the 700 Club increase in the marketplace in
8 1987, on distant systems.

9 MR. GOTTFRIED: Mr. Commissioner, I believe that's
10 totally irrelevant to the Tribunal's determination. It's
11 not as if we had an award in '86 to use as a benchmark, that
12 we could then say change of circumstance. We're here to
13 decide, for the first time, how to split up the Devotional
14 fund.

15 CHAIRMAN AGUERO: The objection is sustained.

16 BY MR. KENNEDY:

17 Q I made a copy of the MPAA-Nielsen summary
18 statistics, and I see there were over 3 billion viewing
19 hours available. Can you tell me what percent the Settling
20 Devotional Claimants' programming made up of that 3 billion
21 viewing hours?

22 A No, I can't.

23 Q Can that be supplied for us?

24 A I don't now that it can be. A universe of 3
25 billion seems to me -- your question was what percent that

1 the Settling Claimants, of that 3 billion, is that hours?

2 Q What percent of the Settling Devotional Claimants'
3 programming made up the 3 billion viewing hours?

4 A Three billion viewing hours?

5 Q Uh-huh.

6 MR. GOTTFRIED: Do you want a calculator? I don't
7 think my calculator can go up to 3 billion.

8 CHAIRMAN AGUERO: Mr. Kennedy, if we were in Phase
9 I, we would accept what you said, but it is completely
10 irrelevant for us. We are in Phase II.

11 MR. KENNEDY: I know. I'm trying to prove a point
12 here. They are saying that CTC programming was on
13 relatively few stations in comparison. I'm trying to show
14 that the WPAA-Nielsen Study shows that, really, the 700 Club
15 only showed up on 21 stations, PTL Club only showed up on 13
16 stations, In Touch Ministry only showed up on 3 stations,
17 and if you're going to compare the total number of stations
18 that these programs are on and the total number of
19 subscribers they meet, strictly from this study, then it's
20 really not all that much.

21 THE WITNESS: But these 119 stations accounted for
22 97 percent of all recarriage.

23 MR. KENNEDY: I understand that.

24 THE WITNESS: So, the other 400 or so stations
25 only accounted for 3 percent. That's why they were picked.

1 BY MR. KENNEDY:

2 Q Right. And I also understand that in 1983 there
3 were stations that we are on that were included in the
4 survey, and those stations are not in this survey this time,
5 and they are significant stations.

6 I guess the point I'm trying to make is, the
7 summary of the MPAA-Nielsen report show that of all
8 Devotional Claimants combined -- I believe there was
9 something like 4 percent made up the total viewing of the
10 Nielsen Study, is that correct?

11 MR. GOTTFRIED: I don't believe there's a
12 foundation for that.

13 BY MR. KENNEDY:

14 Q According to the summary sheet, of all the total
15 Devotional programs included in the MPAA-Nielsen study, is
16 it true that only 4.6 percent were devotional?

17 MR. GOTTFRIED: Objection, irrelevant.

18 MR. KENNEDY: Why is that irrelevant?

19 CHAIRMAN AGUERO: It is a Phase I question, sir.

20 Objection sustained.

21 BY MR. KENNEDY:

22 Q Dr. Clark, the Tribunal in 1978, and in each of
23 its decisions since then, has said it would base its award
24 on the application of five criteria, which you mention
25 briefly in your testimony. Are five criteria more important

1 to the Settling Devotional Claimants than the Nielsen Study?

2 MR. GOTTFRIED: I don't understand the question,
3 Your Honor.

4 CHAIRMAN AGUERO: Would you repeat the question,
5 sir.

6 BY MR. KENNEDY:

7 Q The question was, the Tribunal in 1978, and in
8 each of its decisions --

9 CHAIRMAN AGUERO: What page is that, Mr. Kennedy?

10 MR. KENNEDY: Pardon?

11 CHAIRMAN AGUERO: What page?

12 MR. KENNEDY: He mentions on the first page of his
13 testimony that -- paragraph 2 -- "I will also analyze the
14 basis for a fair award to the Settling Devotional Claimants
15 under the decisional criteria used by the Copyright Royalty
16 Tribunal in prior cable royalty distribution proceedings.

17 Okay. He has indicated in his testimony this
18 morning that they are relying heavily on the MPAA-Nielsen
19 Study, for an award. I'm wondering --

20 CHAIRMAN AGUERO: This is the starting point of
21 the Tribunal in Phase II.

22 MR. KENNEDY: Pardon?

23 CHAIRMAN AGUERO: The Nielsen Survey is the
24 starting point for us. Not heavily, you say heavily --

25 MR. KENNEDY: It seems to be indicated to me that

1 he is relying heavily on --

2 CHAIRMAN AGUERO: Well, to us it is the starting
3 point, but heavily I don't think is the right word.

4 BY MR. KENNEDY:

5 Q Okay. What I'm trying to ask him is, is the five
6 criteria that you have set up equally important to the HPAA-
7 Nielsen Study?

8 CHAIRMAN AGUERO: Are you asking me or are you
9 asking him?

10 MR. KENNEDY: I'm asking him.

11 CHAIRMAN AGUERO: Okay. Dr. Clark?

12 THE WITNESS: My understanding of why we are here
13 is to -- is a hearing in which we must go by the rules at
14 this point, that the Tribunal has set up. Now, we went
15 through a process by which we tried to detail what we would
16 consider a more equitable way to settle. That's not what
17 we're doing here and, as I understand it, we're not here to
18 have a hearing on the basis by which this settlement will be
19 made.

20 Therefore, I have tended in this testimony, to
21 confine my remarks to the starting point, as the Tribunal
22 has indicated, which is the HPAA-Nielsen Study.

23 BY MR. KENNEDY:

24 Q So you are not relying on the five criteria at all
25 then?

1 A No. At this point, we're using this as a starting
2 point.

3 Q On page 6 of your 1983 written direct case
4 testimony, you state that the 700 Club reaches 16,300,000
5 households per month. Was that both off-air broadcast
6 signals and distant signals combined?

7 MR. GOTTFRIED: I'm sorry -- what testimony are we
8 referring to?

9 MR. KENNEDY: Your Exhibit Number 3 mentions
10 testimony of David Clark, pages 5 through 7.

11 MR. KENNEDY: Would you have any objection if I
12 show Dr. Clark the testimony to which you refer?

13 MR. KENNEDY: Absolutely no.

14 MR. GOTTFRIED: What page is it?

15 MR. KENNEDY: It's on page 6.

16 (Mr. Gottfried approached the witness and handed
17 him the document referred to)

18 BY MR. KENNEDY:

19 Q The question was, the 700 Club reaches 16,300,000
20 households per month. Is that both off-air and distant
21 signals combined?

22 A Let me describe the methodology just a moment, of
23 the Nielsen Television Index study which was done. The
24 Nielsen Television Index looked at all viewing as
25 demonstrated by the local ratings data which they generated

1 through diaries, and what made this study unique was it also
2 included cable viewing for 700 Club. And if a local viewer
3 were watching the 700 Club on a station or on a cable system
4 and indicated so in their diary, it would be reflected in
5 this number, this cumulative monthly number.

6 So, I think the answer to the question is, it
7 reflected all viewing of the Club, and that would have to
8 include distant carriage. So, I believe that -- as I'm
9 talking, I'm reviewing the methodology. This was a special
10 study that was done for us at that time, and it also dealt
11 with the factor I alluded to earlier, which was that
12 typically ratings are developed to measure once-a-week
13 viewing, and they measure four quarterhours of viewing in a
14 one-hour program.

15 What this got at was unduplicated audience,
16 cumulative unduplicated audience for a one-month period.
17 So, I think all viewing, hopefully -- the point of the study
18 was to get all viewing of the Club, including any that was
19 distant carriage.

20 Q I understand that the MPAA-Nielsen Study was done
21 in prior years, on a four-cycle and then on a six-cycle
22 basis, is that correct?

23 A Yes.

24 Q Do you know if the last study was done on a four-
25 or six-cycle basis?

1 A I'm not positive. I believe it was a six-cycle
2 study, but there's big rating books and small rating books,
3 four large books a year and two small books a year, but I'd
4 have to check that.

5 Q Does any of the Settling Devotional Claimants'
6 programmers produce special programs such as Christmas
7 programs that you mentioned earlier, or any kind of special
8 programs that might be shown on a single occasion?

9 A Certainly. They frequently do at holiday season,
10 special programs.

11 Q And if it aired during holiday season, such as
12 Christmas, then that would not be included in --

13 A That would not be in a big book or a small book.

14 Q Going back to the 16,300,000 households per month
15 in 1983, do you know how many households 700 Club reached in
16 1987?

17 A No.

18 Q Was it more or less than that?

19 A I would estimate -- and that's without having
20 Nielsen do this Special Study, which was a pretty large
21 study -- that the audience in '87 was about the same. And
22 the reason for that is, there was tremendous increase in the
23 size of CBN Cable in terms of households it reached, which
24 may have off-set any fall-off in numbers of stations to
25 which the program was syndicated.

1 So, I would estimate -- and I don't have any
2 reason to think it wouldn't be roughly the same. It was
3 still produced daily. Certainly, in all the major markets,
4 it was on the same big stations -- KTLA in Los Angeles and
5 so forth -- on a daily basis.

6 There may have been a few stations, syndicated
7 stations, that were dropped in secondary markets, but the
8 effect of that would not have appeared on total audience. I
9 don't think it would have had much impact on total audience,
10 nor on recarriage, because the major stations are the ones
11 that have a lot of cumulative viewing, and those are the
12 ones that when you seek to syndicate a program, you try to
13 preserve, as you know.

14 Q The cable data detailed report of religious
15 programming from the Nielsen Study, shows a list of the
16 distant stations and the times they aired the various
17 syndicated religious programs. It only shows 13 different
18 stations carrying PTL Club. Do you know if that is greater,
19 lesser, or the same number represented in the 1986 survey?

20 MR. GOTTFRIED: Objection, irrelevant.

21 MR. KENNEDY: Why is it irrelevant? I don't
22 understand.

23 CHAIRMAN AGUERO: Would you repeat the
24 question?

25 MR. KENNEDY: I'm asking that the Nielsen Survey

1 only shows 13 different TV stations carrying the PTL Club.
2 Is that greater, lesser, or the same number represented in
3 the 1986 survey?

4 MR. GOTTFRIED: The same objection as we made
5 earlier. This is the first year that the Devotional fund is
6 to be divided. There is no benchmark that has been set by
7 the '86 fund and a change in circumstance will have no
8 significance to the Tribunal.

9 CHAIRMAN AGUERO: Objection sustained.

10 BY MR. KENNEDY:

11 Q You mentioned in your testimony that you were
12 CBN's Vice President of Marketing from 1981 to 1987?

13 CHAIRMAN AGUERO: What page, Mr. Kennedy?

14 MR. KENNEDY: Page 2, biographical information,
15 qualifications.

16 THE WITNESS: That's correct.

17 BY MR. KENNEDY:

18 Q When in 1987 did you become the Trustee for the
19 PTL --

20 A November 1st.

21 Q November of '87, is that correct?

22 A (Nodding head)

23 Q As CBN's Vice President of Marketing, was the
24 placement of the 700 Club on television broadcast stations
25 in the area of your responsibility?

1 A Yes.

2 Q And what methods did you use to get the 700 Club
3 on these stations?

4 A The primary method was to acquire a time period on
5 a station and pay them for that time period. That was not
6 the exclusive method. In many cases, we traded the program
7 for other programs we had that the station wanted. And in
8 many cases, the program was carried free by stations. They
9 simply wanted the program on their station.

10 Q Is the 700 Club 60 minutes or 90 minutes now?

11 A Today?

12 Q In 1987. Was it both?

13 A Yes. There was a 60-minute version and a 90-
14 minute version. Some stations carried 60 minutes, some
15 carried 90.

16 Q And how many times a day did it air?

17 A In the morning, 10:00 to 11:30.

18 Q Was that the only time it was broadcast from CBN?

19 A Are you asking on CBN Cable?

20 Q Well, I understand from prior proceedings that the
21 program aired like four times a day. Was that the norm in
22 1987?

23 MR. GOTTFRIED: Can we have clarification of
24 whether this is on distant signals, on cable network, on
25 broadcast signals?

1 MR. KENNEDY: On distant signals.

2 THE WITNESS: The program -- for the Tribunal, the
3 program was put on --

4 CHAIRMAN AGUERO: You taped a 90-minute program?

5 THE WITNESS: Yes.

6 CHAIRMAN AGUERO: And then the station only aired
7 60 minutes?

8 THE WITNESS: It depends. Some stations aired 90
9 minutes.

10 CHAIRMAN AGUERO: How did they do it? Take a
11 segment of the program, or how did they do that?

12 THE WITNESS: We try to avoid taping because
13 that's a costly process for a station, to tie up a tape
14 machine. So, what was happening in '87 was, the program was
15 being put up on our cable system, which puts it on the
16 satellite, on the Hughes satellite. It was put up live
17 every day at 10:00 o'clock. It was aired in the early
18 evening on the cable network, and it was aired at, I think
19 in '87 we switched sometime from 9:00 to 10:00 p.m., and
20 then it was aired at 2:00 a.m. in the morning -- 3:00 a.m.
21 in the morning.

22 So that to say how many times it was aired by a
23 distant station is very difficult. In general terms, they
24 aired it once a day. Many stations, though, aired it twice
25 a day, but these would have been devotional type stations

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1 themselves. But the point is, by putting it on the
2 satellite three or four times in 24 hours, a station had the
3 option of either airing it live or taping and playing again
4 right away.

5 We, through satellite distribution, have gotten
6 away as much as possible, from actually having to tape it
7 and send a tape out to a station. That's what I was trying
8 to get at, Commissioner Aguero.

9 BY MR. KENNEDY:

10 Q You state in your testimony on that same page,
11 that you became the federal bankruptcy Trustee for PTL and
12 held that position until June, 1988.

13 A The end of May, to be precise.

14 Q During that time, was the PTL program or Jim
15 Bakker program dropped from any distant stations or distant
16 cable systems?

17 A During -- you're talking about from November 1st
18 to December 31st. The PTL Program --

19 CHAIRMAN AGUERO: November, what, 1987?

20 THE WITNESS: '87, November 1, 1987. In general
21 terms, the answer would be that the program was steadily
22 being dropped by stations during the period that I was
23 there, but to give you the specific answer, was it dropped
24 from any of these 119, I can't answer. I'd have to do some
25 more study.

1 BY MR. KENNEDY:

2 Q Do you know what kind of percentage decrease it
3 had in 1987, from November 1 to January 1 of '88?

4 A Very few stations dropped, but we continued to
5 hold Los Angeles, which was a major station channel -- major
6 entity out there -- and there was some dropping, but
7 basically the program had been sort of reduced to a bare
8 minimum by the time I got there.

9 Q What do you mean, bare minimum?

10 A I think continued to be aired in about 80 percent
11 of TV households in the U.S., by virtue of being on stations
12 in major markets.

13 Q I'm not sure I understand. By bare minimum, are
14 you talking about it was aired on more systems before then?

15 A Yes. Definitely was dropped by a number of
16 stations, particularly prior to bankruptcy. Once it went
17 into Chapter 11, then stations were enjoined from dropping
18 it. So, the only stations who could drop and were allowed
19 to drop by the Trustee at that point, were stations that
20 were considered non-essential, but at that point, once we
21 were in 11, major stations could not legally drop the
22 program. So, it was more or less frozen, and as I recall we
23 were clearing between 70 and 80 percent of all TV households
24 in the U.S., when I got there.

25 CHAIRMAN AGUERO: Dr. Clark, has the format of the

1 show had a drastic change, or do you keep the same --

2 THE WITNESS: Of the PTL?

3 CHAIRMAN AGUERO: The PTL -- I mean, a less amount
4 of hours and the excitement of the previous MC? Did you
5 change the format of the show?

6 THE WITNESS: The show was still done an hour
7 daily, and the format in terms of a lot of music and
8 Christian testimonies and so forth is pretty much the same,
9 but I think you would have to -- it would be undeniably true
10 that with Jim and Tammy gone, the excitement of the hosts
11 had diminished somewhat.

12 So, the Bakkers being gone had an impact, and
13 there were a series of hosts on the program that came and
14 went during '87 and '88.

15 CHAIRMAN AGUERO: Jerry Falwell was there in 1987?

16 THE WITNESS: Jerry Falwell was there, yes, for
17 most of '87, from whenever Jim left -- Jim Bakker left, I
18 think, in March -- through November when he left, and the
19 Court then took over. He was debtor-in-possession, seen as
20 debtor-in-possession. Once he left, then the Court
21 appointed a Trustee. So, I was there seven months in that
22 role, but the program certainly still drew large live
23 audiences. Many days we had the studio filled with --

24 CHAIRMAN AGUERO: You're talking '88 or '87?

25 THE WITNESS: '87, and into '88. Many days we had

1 a thousand people there in a live audience, and -- that
2 didn't happen every day, but there certainly were days when
3 special guests were there --and there was still a good deal
4 of excitement. Christmas in '87 was a significant event
5 still for Heritage. The hotel was full, and there was a lot
6 of excitement there. So, I think in '87 the momentum was
7 pretty much still there, and by virtue of the Chapter 11
8 action in which large stations were prohibited from dropping
9 -- you know --

10 CHAIRMAN AGUERO: Thank you, Dr. Clark.

11 Mr. Kennedy, I'm sorry.

12 BY MR. KENNEDY:

13 Q Did the problems leading to the PTL bankruptcy
14 have any negative effects on the other Settling Devotional
15 Claimants' programs?

16 A Can you be more specific by what you mean by
17 negative effect?

18 Q For instance, Jerry Falwell took over up there.
19 Did that have a negative effect on the Old Time Gospel Hour
20 being dropped from distant stations?

21 A I'm not aware of any.

22 Q Did he ever complain about being dropped?

23 A Not that I recall. I did hear him publicly say
24 that he felt support for his ministry had been affected,
25 contributions, but I can't recall him saying that he had

1 been dropped from stations.

2 Q What about the 700 Club? Did it go through
3 negative effects because of the Bakker controversy?

4 A Was it dropped by stations, is that what you're
5 asking?

6 Q Yes.

7 A I think the 700 Club did some trimming during '87,
8 of stations it considered to be non-essential. By that I
9 mean stations with very small cumulative daily and weekly
10 numbers, but certainly the larger stations did not drop it.

11 Q So, what do you consider an insignificant or a
12 smaller station?

13 A Well, I would -- if you're asking me to come up
14 with an operational definition, I think you'd have to look
15 at the daily cumulative viewing and the weekly cumes of
16 viewing in a market, to determine what percent basically of
17 the whole TV audience the station was garnering, and to set
18 a specific criteria, I think it would be relative to more or
19 less in each market, you'd look at how the TV audience is
20 divided up in each market.

21 And I think you know that generally the net
22 affiliates in any given market, at any time, will command 50
23 to 60 percent of the audience, and certain times, certain
24 day parts, they will command 90 percent, but if you look at
25 cumulative viewing in the course of a week, what you are

1 getting is more or less the total number of customers
2 walking through a station, if you will. That might be one
3 good way. I don't know, I'd have to think about it.

4 Q The 700 Club, was it dropped from WCLF-TV Tampa?

5 A I don't know that.

6 Q For your information, I work at that particular
7 station. We did not drop any of PTL or the 700 Club during
8 that time. So, I'm glad to see that we were not an
9 insignificant station.

10 (Laughter.)

11 What TV ministries that you are a witness for in
12 this proceeding today -- strike that.

13 In reviewing the Nielsen Cable Study, I notice
14 that KXTX was listed again. I think it was listed in 1983.
15 Does CBN still own KXTX?

16 A In Dallas.

17 Q Dallas, Texas, yes.

18 A Yes.

19 Q Of the 119 stations chosen for the MPAA-Nielsen
20 Study, how many of those were specialty stations?

21 A I don't know that.

22 Q Is KXTX a specialty station?

23 A Can you define what you mean by specialty station?

24 Q A specialty station is a station whose programming
25 consists of one-third or more religious programming or

1 foreign language.

2 A I don't think KXTX would fall in that category.

3 Q What kind of format do they have? Is it mostly
4 religious?

5 A No. It's a commercial station, and I think a
6 third -- it might be close to a third devotional
7 programming, but I doubt that it exceeds that.

8 Q Do you have any idea of the number of distant
9 subscribers that view KXTX?

10 A No, I don't, but I do know that KXTX is carried by
11 a good number of cable systems, particularly in West Texas,
12 but as far as the actual number, I don't know.

13 Q Is that in 1987?

14 A Yes.

15 Q Was that an increase over 1986?

16 MR. GOTTFRIED: Objection, irrelevant.

17 BY MR. KENNEDY:

18 Q On the first page of your --

19 CHAIRMAN AGUERO: We have an objection.

20 COMMISSIONER ARGETSINGER: Are you withdrawing
21 your question?

22 CHAIRMAN AGUERO: You are withdrawing the
23 question?

24 MR. KENNEDY: Yes.

25 CHAIRMAN AGUERO: Okay.

1 BY MR. KENNEDY:

2 Q On the first page of your testimony, you state
3 that you will analyze the basis for a fair award under the
4 decisional criteria, and I believe you have that -- are you
5 going to go into that?

6 A No. I've offered as testimony what we have here,
7 and I wasn't planning to go into that.

8 Q So, you don't have any information as to how the
9 Settling Devotional Claimants are harmed by retransmission
10 of cable systems?

11 A Well, I testified about that earlier, but my
12 understanding is that was in another proceeding and doesn't
13 relate to this.

14 Q Are you saying that the five criteria does not
15 relate to this particular proceeding?

16 A My understanding is that the basis of this has
17 been primarily as outlined -- the starting point as outlined
18 by the Tribunal has been the Nielsen data. What is your
19 question about harm?

20 Q Well, I was going to go through each of the
21 individual five criteria, to find out how the Settling
22 Devotional Claimants' programs are harmed by secondary
23 transmission of cable systems.

24 A If you want to proceed and ask me specific
25 questions on those, I'd be happy to answer.

1 Q How are they harmed?

2 A Well, I think anytime a program that's prepared is
3 copyrighted, is rebroadcast, there is potential harm there
4 to the copyright owner, and in general terms I think that
5 makes sense.

6 Now, one of the considerations here is to what
7 extent that applies to devotional programming, the kind of
8 programming it is, and so forth. If you would like to
9 pursue a specific line --

10 Q No. I'm trying to get an overall picture of all
11 the Settling Devotional Claimants' programs that you are a
12 witness for.

13 What about marketplace value? I think the
14 Tribunal is trying to determine the marketplace value of
15 programming here.

16 A I don't know how to answer that question, what
17 about marketplace value. What do you want --

18 Q What is the marketplace value of, for instance,
19 700 Club, PTL Club, Old Time Gospel Hour, on secondary
20 transmissions of cable systems, distant cable systems?

21 A There is certainly a value for cable systems to
22 have a wide variety of programming, and one of the points I
23 made earlier was that cable operators seek to construct a
24 variety of programming so that their subscribers will want
25 to subscribe, and the wider the variety of that programming,

1 the theory of the industry is, and I think there is evidence
2 to show, that the more you can offer by way of programming,
3 whether it be a in basic service or a pay tier as we call
4 it, the more variety that's there, the greater the
5 likelihood of people subscribing and paying the fee for
6 subscribing.

7 So, therefore, in my opinion, there is certainly a
8 definite advantage in having devotional programming along
9 with a wide variety of other programs. And I think the
10 point I was making is that that's not always related to
11 ratings. In other words, a cable operator doesn't just
12 carry highly rated programs, but he wants to carry programs
13 which may not have high ratings per se, but still have a
14 significant interest to the part of the audience and,
15 therefore, I think there's certainly market value to
16 devotional programming, if that's the line that --

17 Q You mentioned variety being important to a cable
18 operator. What kind of variety does PTL offer for cable
19 operators?

20 A PTL?

21 Q Heritage Ministries. Do they have more than one
22 program?

23 A Well, we're talking about '87 now, right?

24 Q Right.

25 A Because at the moment they are more or less non-

1 existent. There is a Heritage Ministries, but it's no
2 longer connected.

3 Q In 1987.

4 A Yes. They offered, in addition to the daily
5 program, they were offering an evening -- one-hour program
6 every evening that was a -- Camp Meeting U.S.A. -- and it
7 consisted of singing and preaching -- it was done live--
8 and in addition to that, they offered a Sunday morning
9 service and a Sunday evening service that they did live from
10 their tabernacle there -- they called it the Barn.

11 CHAIRMAN AGUERO: We will take a recess, five
12 minutes.

13 (Whereupon, a short recess was taken.)

14 CHAIRMAN AGUERO: Back on the record.

15 Mr. Kennedy, will you proceed, please?

16 BY MR. KENNEDY:

17 Q I just have a few more questions. Dr. Clark, in
18 previous proceedings and I quote "I do not believe the
19 rating of viewing figures, whether based on MPAA-Nielsen's
20 Special Study or on a more statistically valid analysis, are
21 an appropriate basis for the distribution of the cable
22 royalty fund". Do you still hold to that belief?

23 A I think I stated earlier, but perhaps I didn't
24 make it clear, that I see problems with ratings for all the
25 Devotional Claimants. I can't see, though, any reason why

1 one claimant or one devotional broadcaster would be impaired
2 more than another, and I think the objectives I have to
3 ratings would generally depress the audience figures for all
4 the Devotional Claimants, and those objections are based on
5 the systems of ratings themselves.

6 Q Are you aware of any other parties' criticism of
7 the Special Nielsen Study

8 A No.

9 Q NAB?

10 A (Shaking head)

11 Q Multimedia?

12 A (Shaking head)

13 Q And I have one final question. In the Settling
14 Devotional Claimants' written direct case you have before
15 you, do you see any evidence that relates in any way the
16 amount of devotional programming to the number of distant
17 systems carrying particular stations?

18 A Would you repeat that?

19 Q Do you see any evidence that relates in any way,
20 the amount of devotional programming to the number of
21 distant systems carrying devotional program for Settling
22 Devotional Claimants?

23 A Do I see any evidence --

24 Q Do you see any evidence that relates in any way,
25 to the amount of devotional programming to the number of

1 distant systems.

2 CHAIRMAN AGUERO: When you say amount, do you mean
3 percentage?

4 MR. KENNEDY: Percentage, total number of
5 programmings and systems together?

6 THE WITNESS: That relates to now what?

7 MR. KENNEDY: I'm going to try to clear this up.

8 BY MR. KENNEDY:

9 Q As I was going through your direct case, the only
10 thing I saw in Exhibit Number 2, for instance, was the
11 special viewing hours that were done by the Nielsen Study.

12 I'm asking you; does your report reflect any
13 distant systems that these programs were on?

14 A This report reflects every station that was
15 carried, whose signal was carried as a distant signal, that
16 had more than 80,000 homes. So, I don't know if that
17 answers the question, but that's the criteria by which the
18 stations, the 119 stations, were selected.

19 Q But there's nothing in the report that I can see
20 that physically shows the numbers, is that correct?

21 A Physically shows what numbers?

22 Q Physically shows the number of distant systems.

23 A No, that's true. It's grouped by station and the
24 actual recarriage of each station.

25 Q And it does not show, physically show, the number

1 of subscribers that were on the systems carrying the
2 stations.

3 A That's correct.

4 Q It does not show any fees generated by the
5 systems, is that correct?

6 A Right, that's correct, the study does not show
7 fees generated.

8 MR. KENNEDY: That's all the questions I have.
9 Thank you.

10 CHAIRMAN AGUERO: Commissioner?

11 COMMISSIONER ARGETSINGER: No.

12 CHAIRMAN AGUERO: Counsel?

13 MR. GOTTFRIED: Before a brief redirect, I'd like
14 to move into evidence on the basis of the direct and cross,
15 Settling Devotional Claimants' Exhibits Numbers 1, 2 and 3.

16 CHAIRMAN AGUERO: They are admitted, sir, into the
17 record.

18 (Whereupon, Exhibits Nos. SDC-
19 1, 2 and 3 were received in
20 evidence)

21 MR. GOTTFRIED: Thank you.

22 REDIRECT EXAMINATION

23 BY MR. GOTTFRIED:

24 Q Just very briefly, Dr. Clark, Mr. Kennedy asked
25 you about special programs, Christmas specials, were those

1 produced by the Settling Devotional Claimants as well as by
2 the Christian Television Corporation?

3 A Yes, I think basically all devotional or most
4 devotional programmers produce special programs at
5 Christmas?

6 Q Do you have any reason to believe that the Nielsen
7 data underestimates any Devotional Claimant at the expense
8 of any other because of the production of these specials?

9 A I don't think so. I think the point is that a lot
10 of the special programming occurs in non-rating periods, and
11 what is reflected in this study is only rating periods, six
12 rating periods.

13 Q Mr. Kennedy asked you about paying of broadcast
14 signals. Has CBN, to your knowledge, ever had to pay back a
15 cable system the royalties it was required to pay, that this
16 Tribunal is trying to split up?

17 A Not to my knowledge. There was a period of time--
18 - well, it doesn't apply to '87, but in the early days of
19 cable, CBN Cable, they did pay to clear a certain system --

20 Q I'm not talking about the cable system now, I'm
21 talking about --

22 A I understand that, but now it works the other way;
23 they are paid by the cable operators.

24 Q The distant signal carriage, has CBN --

25 A None that I'm aware of, no.

1 Q There were some questions about variety. Can you
2 explain what your testimony was about a variety of programs
3 in relation to the different devotional programs before the
4 Tribunal?

5 A What I had said was that the cable operator -- my
6 knowledge of the way a cable operator tends to construct his
7 cable system, his offerings, if you will, offerings on his
8 system, is to try to seek out as much variety as possible in
9 programming.

10 Q And that's to appeal to discrete audiences, is
11 that what your testimony is?

12 A Yes.

13 Q Now, what about appealing to the discrete audience
14 that's interested in devotional programming?

15 A Well, I think that while there certainly could be
16 some advantage in variety there, a wide variety of
17 devotional programs, there might be more appeal. In actual
18 fact, the programs that bring in large audiences are the
19 strong program, usually a talk show or a flagship program as
20 it's called, that's where you get most of the viewing for
21 this discrete audience of devotional claimants.

22 Q When you talk about these flagship programs, what
23 are some of those programs?

24 A Well, they are programs such as we have talked
25 about here -- the 700 Club; when it was running strong, the

1 PTL Club; then the weekend programs where you have such as
2 Charles Stanley, where you have a very popular religious
3 service, and Jerry Falwell, where they have a big audience
4 to a Sunday morning service.

5 Q Do you know whether Old Time was on WTBS in 1987?

6 A Yes, it was.

7 Q Do you know whether TBS was carried as a distant
8 signal in 1987?

9 A Definitely was.

10 Q Do you know whether any of CTC's programs were on
11 TBS in 1987?

12 A Not to my knowledge.

13 Q What about WOR? Was CBN on WOR in 1987?

14 A (Nodding head)

15 Q Do you know whether that station was carried as a
16 distant signal?

17 A (Nodding head)

18 Q Do you know whether any of CTC's programs were on
19 WOR?

20 A Not to my knowledge.

21 Q Now, let's go back to the criteria very briefly.
22 Do you have any reason to believe that any of the devotional
23 programs are any more harmed by distant signals than any
24 others?

25 A No.

1 Q In terms of the marketplace value, what is your
2 understanding of how the Tribunal has chosen to start its
3 measure of marketplace value?

4 A Well, I think that's -- that the Tribunal has
5 accepted what we are looking at here in the Nielsen because
6 it reflects not just number of hours carried, but also it
7 has an audience number attached to it.

8 Q All right. Let's just go back very briefly to
9 Exhibit Number 2 so we can get the record straight here. I
10 think Mr. Kennedy was asking and trying to understand
11 himself, the viewing hour numbers.

12 First of all, is this a study only of carriage on
13 distant -- distant carriage of broadcast signals, to your
14 understanding?

15 A Yes.

16 Q And that does not include any satellite network?

17 A No.

18 Q Or any local carriage of broadcast signals on
19 cable systems.

20 A That's correct.

21 Q Now, the Viewing Hour column, can you explain how
22 that's generated?

23 A That's the number of stations times the length of
24 program times the number of hours of actual viewing.

25 Q And that's the actual viewing as measured by the

1 diaries?

2 A That's correct. And my understanding is, on
3 reflecting on this, if you were to break it down into
4 quarterhours you would have to multiply -- in other words,
5 if it were viewing quarterhours, it would be four times
6 this.

7 Q And this is viewing quarterhours by people
8 watching on cable, distant signals, is that correct?

9 A Viewing hours.

10 Q By people watching on cable, distant signals?

11 A That's correct.

12 Q And that shows at least on 119 stations there was
13 no such viewing of any of CTC's programming?

14 A Right.

15 Q And the quarterhours is what, Dr. Clark?

16 A The quarterhours then is the number of stations
17 times the length of the program times the number of days in
18 the rating period. There were six rating periods, one-week
19 rating periods, so you have basically six weeks.

20 Q The ROSP report that there was brief questioning
21 about, is that a report on distant signal carriage?

22 A No, it isn't.

23 MR. GOTTFRIED: I have no further questions.

24 CHAIRMAN AGUERO: Do you have anymore comments, or
25 this will finish the testimony of Dr. Clark?

1 CHAIRMAN AGUERO: It is 12:00 o'clock. We will
2 return at 1:45 to the hearing room.

3 Dr. Clark, thank you very much.

4 (Whereupon, the witness was excused.)

5 (Whereupon, at 12:00 noon, the luncheon recess was
6 taken.)

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AFTERNOON SESSION

(1:45 p.m.)

CHAIRMAN AGUERO: Back on the record.

Mr. Kennedy, would you proceed.

MR. KENNEDY: Mr. Chairman, I would like to present our witness for the Children's Ministry, Mr. Don MacAllister.

Whereupon,

DONALD MacALLISTER

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN AGUERO: Do you have any comments, Mr. Kennedy?

MR. KENNEDY: Yes. In Mr. MacAllister's testimony, on CTC Exhibit Number 2, the first page of his testimony, there is a revision of the numbers in the middle paragraph where it says "Approximately 525,644", that number is changed to 53804, and the increased percentage is 68.5 instead of 74.4.

CHAIRMAN AGUERO: Instead of 525,644, it is changed to --

MR. KENNEDY: 538,084. I have copies if everyone would like a copy. And I'm striking out the words "Form 3" and just using "total distant systems".

And down at the bottom in the footnote where it

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1 says "301,397 Form 3", that should be "319,349 distant
2 system subscribers".

3 COMMISSIONER ARGETSINGER: And you're striking the
4 words "Form 3"?

5 MR. KENNEDY: Right. It's just going to be
6 strictly distant system subscribers. And I have one other
7 change, which is on CTC Amended Exhibit Number 12, it's the
8 list of Joy Junction stations on distant systems. We
9 inadvertently left off two stations, which is WTJC and WKOI.

10 CHAIRMAN AGUERO: Any particular community?

11 MR. KENNEDY: WTJC is Springfield, Ohio and WKOI
12 is Richmond, Indiana. They air Joy Junction one time a week
13 each.

14 CHAIRMAN AGUERO: Mr. Kennedy, would you proceed,
15 please.

16 DIRECT EXAMINATION

17 BY MR. KENNEDY:

18 Q Don, would you get out your exhibits? Do you have
19 the exhibits before you?

20 A Yes, I have.

21 Q Would you state your name and address for the
22 record, please?

23 A Don MacAllister, 6900 County Road 95, Palm Harbor,
24 Florida.

25 Q Mr. MacAllister, do you have in front of you what

1 is marked as CTC Exhibit Number 2?

2 A Yes, I have.

3 Q And is that your testimony?

4 A Yes.

5 Q And is there any changes, corrections, additions,
6 or deletions that need to be made?

7 A None other than what you just made.

8 Q Is it true and correct, to the best of your
9 knowledge and belief?

10 A Yes, sir.

11 Q Mr. MacAllister, you also have before Amended CTC
12 Exhibits Numbers 9, 10 and 12, Number 12 pertaining only to
13 Joy Junction and Becky's Barn programs. Are there any
14 changes, corrections, additions, or deletions that need to
15 be made in any of these, that we have not already made?

16 A No, none that I'm aware of.

17 Q Would you give the Tribunal a brief sketch of your
18 professional and educational background that qualifies you
19 to speak for Christian Television Corporation Children's
20 Ministries?

21 A I'm a graduate of the St. Petersburg Bible
22 Institute in St. Petersburg, Florida. I have worked since
23 graduation in mostly church functions, all regarding
24 children, from Sunday School to Sunday School
25 Superintendent, to Children's Church Director, and that's

1 where I was last when CTW asked me to take on the Children's
2 Ministry.

3 Q And you took over the Children's Ministry at what
4 point?

5 A In 1979, there was nothing. This was the
6 beginning of our station, so there was nothing, so we
7 developed and started the program for CTW.

8 Q So, you built the Children's Ministry from the
9 very beginning of CTC's existence, is that correct?

10 A Yes, sir, that's correct.

11 MR. KENNEDY: I have no other questions. At this
12 point, I would present Mr. MacAllister as an expert witness
13 on our children's programming.

14 CHAIRMAN AGUERO: Mr. Midlen, any voir dire of Mr.
15 MacAllister, sir?

16 MR. MIDLEN: I object to his being offered as an
17 expert. I don't believe there is such a field as what he
18 was offered as an expert in.

19 MR. KENNEDY: Well, he's offered as the expert of
20 CTC's children's programming.

21 MR. MIDLEN: He's offered as CTC's witness,
22 without characterizing him as an expert in any particular
23 field. If that's the case, I withdraw the objection.

24 MR. KENNEDY: I don't know of anybody who is more
25 knowledgeable about CTC's children's programming than the

1 one who ordained it and established it, so if he's an expert
2 on it, anybody is.

3 CHAIRMAN AGUERO: Do you offer him as a witness
4 expert in reference to that particular program?

5 MR. KENNEDY: What is the objection?

6 MR. MIDLEN: Let me explain. With respect to an
7 expert, whether it's a chemist, a doctor, whatever, there is
8 a certain procedure, obviously, that you must go through in
9 order to qualify one as a witness, and they can offer
10 opinion testimony.

11 A regular witness not so qualified, which I
12 believe Mr. MacAllister is, is not permitted to serve in
13 that role, and I would suggest to the Tribunal that Mr.
14 Kennedy doesn't even know what an expert witness is--
15 that's not criticism of him because this is his first case,
16 I think, but in any event the mere use of the word "expert"
17 is enough to have generated this discussion.

18 CHAIRMAN AGUERO: Mr. Kennedy, would you change
19 the word "expert" to "qualified person" for that particular
20 program, would that satisfy yourself?

21 MR. KENNEDY: How about "our most knowledgeable
22 witness on children's programming", is that okay?

23 MR. MIDLEN: That would be fine.

24 CHAIRMAN AGUERO: Then you withdraw your
25 objection?

1 MR. MIDDLEN: Yes, but my objection was to him
2 being offered as an expert witness.

3 CHAIRMAN AGUERO: Thank you very much.

4 MR. MIDDLEN: Your Honor, I'm aware that the
5 Tribunal has ruled on our Motion to Strike, and your General
6 Counsel was kind enough to give me -- lend me -- an extra
7 copy of the Order, as I unfortunately left mine back in the
8 office.

9 Many of the objections which were overruled, were
10 overruled on the basis that a witness would be here to
11 sponsor them, and I would like to go through Mr.
12 MacAllister's testimony and object to so much of it as we
13 believe should not be received into evidence.

14 In the first paragraph, I would ask that so much
15 of it as "I oversee" and concluding with "each program" not
16 be received in evidence, it's irrelevant, totally
17 irrelevant, and nothing that this witness has said this
18 afternoon has made it -- given it any basis that would be
19 germane to anything this Tribunal does.

20 MR. KENNEDY: Let me see if I can find that. I
21 seem to have misplaced my copy of his -- oh, here it is.
22 Okay. You are objecting to what now, the first --

23 MR. MIDDLEN: The words beginning with "I oversee"
24 ending with "each program".

25 MR. KENNEDY: What is the basis of your objection?

1 I mean, why do you feel it's irrelevant?

2 MR. MIDLEN: Would you please address the
3 Tribunal? I've stated my objection and the reasons therefor
4 at quite some length.

5 MR. KENNEDY: I'm sorry, I don't understand his
6 reasons.

7 CHAIRMAN AGUERO: Can you repeat to Mr. Kennedy,
8 your objection that you have.

9 MR. MIDLEN: My objection is that it is
10 irrelevant, that it has absolutely nothing to do with
11 anything that is germane to what is before this Tribunal.

12 CHAIRMAN AGUERO: Do you follow, Mr. Kennedy?

13 MR. KENNEDY: I have no idea what that has to do
14 with him overseeing the employees and volunteers being
15 struck from the record. It makes no sense to me. That is
16 simply a job that he performs, and Dr. Clark stated that he
17 oversaw various departments of the Marketing Division of
18 CBH, which is basically the same thing. He oversees the --

19 CHAIRMAN AGUERO: The objection is overruled.

20 MR. MIDLEN: In paragraph 2, nothing he has said
21 this afternoon ties it into anything that is before this
22 Tribunal, and I would object to that.

23 MR. KENNEDY: The entire paragraph?

24 CHAIRMAN AGUERO: Beginning where, Mr. Midlen?

25 MR. MIDLEN: The entire second paragraph.

1 CHAIRMAN AGUERO: "Our most popular children's
2 program" to "correspondent course".

3 Mr. Kennedy?

4 MR. KENNEDY: Again, that's the main part of our
5 entire argument in this proceeding, is the popularity of Joy
6 Junction, one of our children's programs, and the popularity
7 is based on an average of 2,000 letters a month.

8 CHAIRMAN AGUERO: The objection is overruled.

9 MR. MIDLEN: In the third paragraph, I object to
10 anything relating to satellite networks.

11 MR. KENNEDY: I have no objection.

12 CHAIRMAN AGUERO: Where is that, Mr. Midlen?

13 MR. MIDLEN: Third paragraph. It would start in
14 the first line of the third paragraph with the word "and".

15 CHAIRMAN AGUERO: "And the nationwide satellite
16 network" --

17 MR. MIDLEN: Right, and go through the words
18 "subscribers", "the 8,960,000 subscribers".

19 MR. KENNEDY: I would object to that being struck.
20 I don't object to the PTL, TBN, RCN letters being struck out
21 of the testimony, or the Liberty Broadcast Network and the
22 Motivational Network out of Rock Church in Virginia Beach.

23 MR. MIDLEN: Your Honor, that's what it's all
24 about. Anything to do with satellites has no bearing in
25 evidence before this Tribunal.

1 MR. KENNEDY: In that particular paragraph, we're
2 trying to establish how our Children's Ministry has grown
3 over the years, and if that's struck out, it makes no sense
4 to the rest of the testimony.

5 CHAIRMAN AGUERO: Anyway, the objection is
6 overruled.

7 Hr. Kennedy?

8 MR. MIDLEN: I didn't mean that's all the
9 questions I have, that's all the objections I have.

10 COMMISSIONER ARGETSINGER: Do you have anymore
11 voir dire?

12 CHAIRMAN AGUERO: Any more voir dire, sir?

13 MR. MIDLEN: No.

14 CHAIRMAN AGUERO: Let's go to direct by Mr.
15 Kennedy.

16 MR. MIDLEN: Your Honor, we've finished direct, it
17 is now cross.

18 CHAIRMAN AGUERO: You've finished voir dire now.
19 Now Mr. Kennedy is supposed to do direct and then we do
20 cross-examination, no?

21 MR. MIDLEN: Your Honor, I specifically recall Mr.
22 Kennedy saying that the witness is available for cross-
23 examination and that's what I was doing.

24 MR. KENNEDY: No. I said at this point I present
25 to you a knowledgeable witness of CTC's programming, then we

1 go into voir dire.

2 CHAIRMAN AGUERO: We went to voir dire, and now
3 Mr. Kennedy is supposed to go into direct, and then you
4 cross Mr. MacAllister.

5 MR. MIDDLEH: All right.

6 DIRECT EXAMINATION (Resumed)

7 BY MR. KENNEDY:

8 Q Mr. MacAllister, would you give the Tribunal a
9 brief history of CTC's Children's Ministry?

10 A It began in 1979 when the station began. I was
11 asked to come up with at least one children's program, which
12 we did, and that's when Joy Junction was founded and started
13 and first aired in 1979.

14 Q What was your part in establishing Christian
15 Television Corporation?

16 A The network itself?

17 Q Yes.

18 A I had no part in establishing that.

19 Q When did you become a vice president?

20 A Approximately four years ago.

21 Q I understand that you oversee the employees and
22 volunteers who receive all the mail and send out all the
23 materials requested through the mail for the Children's
24 Ministry, is that correct?

25 A That's correct.

1 Q And approximately how many letters on an average
2 does the Children's Ministry receive each month?

3 A We get 2,000 and more per month.

4 Q Are they related to any particular program? Does
5 Joy Junction get all of that mail, or does Becky's Barn get
6 some of that mail?

7 A No, that's all Joy Junction mail. It's kept
8 separate. We do receive mail for Becky's Barn.

9 Q But Becky's Barn is a relatively new show?

10 A That's correct.

11 Q How long has that been on the air?

12 A It first aired in late '87.

13 Q Does the CTC Children's Ministry have a marketing
14 department?

15 A No, sir, not a department as such. We have one
16 employee that has -- wears many hats, but he does not
17 solicit. If that's what you mean, to try and market the
18 program, no, we don't have anyone like that. He just takes
19 care of bicycling tapes.

20 Q By what do you contribute the growth on distant
21 stations and cable systems from year to year?

22 MR. HIDLEN: Objection, Your Honor, it hasn't been
23 established that there is any.

24 MR. KENNEDY: I'll rephrase the question.

25 BY MR. KENNEDY:

1 Q Has there been a growth on distant stations and
2 cable systems from year to year?

3 A Yes, there has.

4 Q And what do you contribute that to?

5 A I think probably a lot of reasons. I think
6 variety. I think they are looking for variety, quick
7 action, fast action paced programs that many surveys have
8 said the children want, they think they are looking for that
9 type. They are looking for programs that do not necessarily
10 contain or have a lack of violence, so to speak, that so
11 many are up in arms against today. I think the fact that we
12 offer it free -- we don't charge for Joy Junction or Becky's
13 Barn to any station, neither do we charge to air children's
14 programs on our station. There's no appeals for fundraising
15 whatsoever on the programs, which is another appealing
16 factor, I think, for the program.

17 Q What marketplace value does CTC's children's
18 program have?

19 MR. HIDLEN: Objection, Your Honor, that's asking
20 for a legal conclusion, and this witness is specifically not
21 qualified to give opinions.

22 CHAIRMAN AGUERO: Would you repeat the question,
23 sir?

24 MR. KENNEDY: Yes. I asked what marketplace value
25 does CTC's children's programs have on distant systems.

1 MR. HIDDEN: That clearly calls for an opinion,
2 and a legal conclusion, and it's also not material.

3 MR. KENNEDY: I think that it is material and
4 relevant to this situation. Virtually every program that we
5 have questioned has been declared to have either some
6 marketplace value -- I think this is what this proceeding is
7 all about, to determine its value in the marketplace.

8 MR. HIDDEN: Your Honor, among other things, we
9 were supposed to exchange all-encompassing direct cases.
10 This testimony clearly goes beyond anything that we were put
11 on notice of with respect to this witness' testimony.

12 COMMISSIONER ARGETSINGER: Mr. Kennedy, can you
13 point to where this is in the direct case?

14 MR. KENNEDY: He doesn't mention marketplace value
15 directly in his testimony, but isn't that a part of the five
16 criteria that the Tribunal bases its decision on?

17 COMMISSIONER ARGETSINGER: Well, yes, but
18 generally our rule is you have to stick pretty close to your
19 direct case. You have to let us know what arguments you're
20 coming in with, with each witness.

21 MR. KENNEDY: Okay. I'll withdraw the question.

22 CHAIRMAN AGUERO: On that basis, your objection is
23 sustained.

24 BY MR. KENNEDY:

25 Q I notice in CTC Exhibit Number 12, which lists the

1 stations and times and days that Joy Junction and Becky's
2 Barn air on, do you have that before you?

3 A Yes.

4 Q Can you tell me if those are good time slots?
5 Would you call those good times?

6 A Oh, definitely, from our response from the
7 children and surveys that have shown Saturday mornings and
8 afternoons are usually the best time for children's shows,
9 yes.

10 Q Can you tell us how many total distant system
11 subscribers were on these 29 cable systems that carry Joy
12 Junction?

13 A How many distant system subscribers?

14 Q Right.

15 A Drawn from the study Mr. Larson did?

16 Q Right.

17 A That was a total of 538,084.

18 Q What about Becky's Barn? How many hours a week
19 did it air on Form 3 systems?

20 A That was two and a half hours per week, by three
21 distant stations, make that a total of 17 and a half hours
22 per week.

23 Q And how many Form 3 cable system subscribers?

24 A That' 196,375.

25 Q You mentioned earlier that Joy Junction receives

1 approximately 2,000 letters a month from viewers. Who keeps
2 track of all those letters?

3 A It's kept track on computer volunteers. My
4 parents oversee the volunteers and handle all the computer
5 work for the mail.

6 Q Why do you contribute so much mail to that
7 particular program?

8 A Probably one of the biggest factors is things we
9 offer free, as I mentioned earlier. We offer a free Bible
10 lesson, we offer a free -- which is a Bible correspondence
11 course. We offer a coloring book, and we just get a lot of
12 letters of commendation from parents and so forth.

13 Q And since Joy Junction began in 1979,
14 approximately how many Bible lessons have been sent out up
15 through 1987?

16 A About 150,000.

17 MR. KENNEDY: That's all the questions I have.

18 CHAIRMAN AGUERO: Any questions?

19 COMMISSIONER ARGETSINGER: No.

20 CHAIRMAN AGUERO: Mr. Midlen?

21 MR. MIDLEN: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. MIDLEN:

24 Q Mr. MacAllister, am I correct that in your
25 testimony and the exhibits, that there is no evidence with

1 respect to what, if any, viewership there is of these
2 programs, on distant cable television systems?

3 A That's correct, I don't know what the viewership
4 is.

5 Q What is the programming of -- is it WCTC in Tampa?

6 A WCLF.

7 Q WCLF. What is the program fare of WCLF?

8 A I don't understand what you mean, program fare.

9 Q What kind of programming.

10 A Overall, on WCLF-TV?

11 Q Yes. Well, let's assume we are starting at 6:00
12 Monday and going through sign-off on Sunday.

13 MR. KENNEDY: I object, sir. That has nothing to
14 do with his testimony.

15 MR. MIDLEN: Well, it certainly does if these
16 programs he's testified about are on WCLF, and I think you
17 will find that they are.

18 MR. KENNEDY: If your questioning relates to
19 children's programming, it does, but you are encompassing
20 overall total broadcasting on WCLF, which has nothing to do
21 with what is covered by his testimony.

22 CHAIRMAN AGUERO: Do you refer to the whole
23 programming on the station in Tampa, or some specific
24 program that Mr. MacAllister has certain knowledge?

25 MR. MIDLEN: First, I want to inquire into the

1 programming as a whole, and then --

2 CHAIRMAN AGUERO: The whole station programming,
3 from Monday to Sunday?

4 MR. MIDLEN: Yes, and then we will focus in on the
5 programs that he's responsible for producing.

6 MR. KENNEDY: I still object. He can go right
7 directly to the programming that he's responsible for
8 producing right now.

9 COMMISSIONER ARGETSINGER: Where are you going,
10 Mr. Midlen, with this?

11 MR. MIDLEN: I'm trying to find out what kind of
12 programming their flagship station, which I understand is
13 wholly owned and operated by Christian Television
14 Corporation, has on it, and what programming is produced by
15 them.

16 MR. KENNEDY: That will be covered in my testimony
17 tomorrow. Mr. MacAllister is strictly in charge of the
18 children's programming.

19 COMMISSIONER ARGETSINGER: I think we should let
20 this go a little ways. If you want to object further when
21 we get down here, but I do see that in Mr. MacAllister's he
22 indicates that he oversees writing and production of each
23 program.

24 MR. KENNEDY: Of each children's program.

25 COMMISSIONER ARGETSINGER: Well, let's let a

1 question or two in here, and we can cut it off if we need
2 to.

3 THE WITNESS: To answer your question, we do
4 produce quite a few programs. There is a program called
5 Solo Actors which does air there and on other stations.
6 Produce Action 60s, which is for senior adults. That's a
7 daily program. We produce Goodnight Alive, which is a local
8 -- our flagship program for just that station and the CTW
9 Network, and that's a daily program. We produce Goodnight
10 Alive every evening at 11:00 o'clock. That's for young
11 people. We produce You and Me, which is a call-in prayer
12 program at 12:00 or 1:00 o'clock in the morning, about
13 midnight or so. We produce Jesse Dixon's musical programs,
14 the Miller Brothers' musical programs, the Downings' musical
15 programs. We produce two children's programs, Joy Junction
16 and Becky's Barn. I'm not sure I've covered them all.
17 There's quite a few productions that we do there, but then
18 the daily fare starting in the morning, we do have a
19 children's block every morning at 7:00 and then at 3:00 to
20 4:00 in the afternoon, and then Saturday morning there's six
21 hours of children's block again. What is interspersed in
22 between is our own program plus a lot of other programming--
23 - D.J. Kennedy and so forth.

24 BY MR. MITCHELL:

25 Q Are the programs that are owned by Christian

1 Television Corporation, shown on other television stations?

2 A Yes.

3 Q Where is that reflected in your exhibits?

4 A I don't know that other programs are mentioned
5 here. This is strictly the children's programs that are
6 mentioned here.

7 Q But is this what Exhibit 12 was talking about?

8 A Strictly children's, strictly Joy Junction,
9 Exhibit 12, that's just the one program, the one children's
10 program.

11 Q And Becky's Barn is on four stations?

12 A That's correct.

13 Q Now, of these stations that these programs are
14 shown on, are any of them owned or operated by people or
15 entities that own WCLF?

16 A Some of them are, yes, which I guess you might
17 call affiliates. They are separate stations, their own
18 boards, owned by the community, so to speak, non-profit
19 corporations in the community with separate boards, but they
20 are affiliates of ours that do receive our signal and our
21 programs, yes.

22 Q Could you explain that?

23 A Well, there's another station, channel 20, in
24 North Carolina, and they take the most of our signal -- I'm
25 not sure of the percentage, but probably two-thirds of our

1 signal because we transmit down there by satellite, they
2 take it from satellite and air most of our programs.

3 Q I don't see North Carolina in this exhibit.

4 A No, sir. I thought you were talking about the
5 station in general.

6 Q Oh, I am.

7 A The exhibit is just particularly Joy Junction.
8 Yes, Joy Junction is picked up by channel 20, and would be
9 an example of one that would receive it by satellite.

10 Q Do you have Exhibit 12 in front of you?

11 A Yes, I have.

12 Q Christian Television Corporation -- is it a
13 correct statement that Christian Television Corporation owns
14 and operates WCLF-TV in Tampa-St. Petersburg?

15 A Yes, sir.

16 Q Now, of the other stations that are on this page,
17 including WTJC and WKOI which you added this afternoon,
18 which, if any, of those stations have the same owners or
19 some of the same owners as WCLF?

20 A I don't believe any of these have. No, sir,
21 there's none on there.

22 Q There's no overlapping ownership or board of
23 trustees membership or whatever?

24 A Not a one, sir, that I'm familiar with, no.

25 MR. KENNEDY: Excuse me -- I was wanting to ask

1 Mr. Midlen if he has the Amended CTC Exhibit Number 12 that
2 was shipped to him?

3 MR. MIDLEN: Yes.

4 MR. KENNEDY: It's listed at the top as being
5 Amended CTC. It should list only distant stations.

6 BY MR. MIDLEN:

7 Q Does Christian Television Corporation own and
8 operate any stations besides WCLF?

9 A Own and operate -- I think it's a true statement
10 that we do not own any others. As I said before, they are
11 owned by non-profit corporations and boards set up in each
12 of the other areas where these stations are. Operate -- I
13 would have to say we are involved in their operation very
14 much so, in that they are receiving the majority of our
15 signal and we work in conjunction with them. That's why
16 we're using the word "affiliate". I don't know if that's
17 the correct wording, but not owned but affiliated with
18 probably is the more correct way of putting it.

19 Q Is there overlap -- is there any one person--
20 well, let me start off -- would you describe the corporate
21 structure of Christian Television Corporation?

22 MR. KENNEDY: I object to that. That goes far
23 beyond the realm of his testimony.

24 MR. MIDLEN: The reason it's relevant is because
25 most of these probably are going to turn out to be non-

1 profit corporations where it's the board of trustees or
2 board of directors that governs them, and I want to find out
3 how much overlap there is between the Tampa station and the
4 other stations.

5 MR. KENNEDY: I still object. What he's saying,
6 the stations he's referring to are not even relevant to this
7 because they are not distant systems, they are not carried
8 by distant systems, other than WCLF.

9 CHAIRMAN AGUERO: Mr. MacAllister has not
10 submitted himself as an expert on CTC.

11 MR. MIDLEN: Well, he's an employee. He's a vice
12 president.

13 THE WITNESS: I'm not an employee, sir. I'm a
14 volunteer.

15 CHAIRMAN AGUERO: You are a volunteer.

16 THE WITNESS: I have never received a dime for any
17 expense or anything I've ever done for them.

18 CHAIRMAN AGUERO: Can you, tomorrow, in your
19 testimony, address Mr. Midlen with an answer?

20 MR. KENNEDY: I think I just did. He's referring
21 to stations that we oversee, I think --

22 COMMISSIONER ARGETSINGER: Well, when you testify
23 tomorrow, it can be brought out then. This is counsel
24 testifying today. So, I think that we should --

25 CHAIRMAN AGUERO: The objection is sustained.

1 BY MR. MIDDLEN:

2 Q Is what Mr. Kennedy said about the other stations
3 not being carried on a distant signal basis, other stations
4 on which Christian Television Corporation programming is
5 aired, that they are not carried on distant cable systems,
6 is that a correct statement?

7 MR. KENNEDY: Objection. He is not clarifying
8 which station.

9 MR. MIDDLEN: Mr. Kennedy objected to my question
10 on the ground that none of the stations I was inquiring into
11 were relevant because they are not carried on distant cable
12 systems, that was essentially counsel testifying.

13 What I am now trying to do is get from the witness
14 that same information that he's already put in the record
15 but as to which he's not the witness.

16 COMMISSIONER ARGETSINGER: Restate your question,
17 please.

18 BY MR. MIDDLEN:

19 Q Is it a correct statement that the other stations
20 that evidently exist, on which Christian Television
21 Corporation programs are broadcast, that those stations are
22 not carried on any distant cable television systems?

23 MR. KENNEDY: Objection. His statement covers an
24 area of broadcast stations that seem to exclude or more than
25 include the ones that CTC is involved with. He's got a

1 general statement going out before the Council here, that
2 states -- I'm not sure exactly how he's rephrasing that, but
3 if he's referring to CTC's stations, our affiliates, he
4 should rephrase his question so that it encompasses and
5 tells us exactly which stations he's talking about. Each
6 one of these stations here on this list picks up our
7 programming.

8 CHAIRMAN AGUERO: Mr. Midlen, can you rephrase
9 your question.

10 MR. MIDLEN: I don't know how I can make the
11 question any clearer.

12 MR. KENNEDY: Name the stations.

13 MR. MIDLEN: I don't know what the stations are.
14 How can I name the stations when I don't know what they are?

15 CHAIRMAN AGUERO: Can you ask Mr. Kennedy tomorrow
16 and he may have an opportunity to answer your question.

17 MR. MIDLEN: No, Your Honor, I can't. I'm going
18 to have to ask for a ruling, and I think that what I've
19 asked for is so clearly within the scope of proper cross-
20 examination, that -- well, I can't say anymore.

21 CHAIRMAN AGUERO: The objection is overruled.

22 THE WITNESS: If I understand the question
23 correctly -- and you did make it clear -- I think you were
24 asking me -- if I may restate it, you were asking me if the
25 stations that CTC is affiliated with --

1 BY MR. MIDLEN:

2 Q Has programs on.

3 A -- has our programs on, if they are carried by
4 distant cable systems.

5 Q I'm asking, is it not true that with the exception
6 of what appears here in Exhibit Number 12, none of the
7 television stations on which CTC programming is broadcast,
8 are carried by distant cable television systems.

9 A I don't know. I do not know.

10 Q You have not -- strike that.

11 Mr. Chairman, Commissioner Argetsinger, I just
12 realized for the moment, that at the bottom of this Exhibit
13 Number 12 are four satellite networks, and I would ask for
14 the same ruling that you made earlier with respect to
15 satellites.

16 CHAIRMAN AGUERO: What ruling is that, sir?

17 MR. MIDLEN: That reference to them be stricken.

18 COMMISSIONER ARGETSINGER: Mr. Midlen, how did we
19 rule on that?

20 MR. MIDLEN: You struck it, in Exhibit 12.

21 MR. KENNEDY: I thought that objection was
22 overruled.

23 CHAIRMAN AGUERO: The objection was overruled.

24 MR. MIDLEN: The PTL, TBN --

25 COMMISSIONER ARGETSINGER: I believe we overruled

1 that.

2 MR. MIDLEN: Well, then I move that the reference
3 to the Nationwide Satellite Broadcast in Exhibit 12 be
4 stricken as irrelevant.

5 MR. KENNEDY: That's exactly the same objection I
6 had before and you overruled it.

7 COMMISSIONER ARGETSINGER: Where is this, Mr.
8 Midlen?

9 MR. MIDLEN: It's on the Joy Junction page.

10 COMMISSIONER ARGETSINGER: Yes, I see it, the
11 first page.

12 CHAIRMAN AGUERO: Nationwide Satellite Broadcast-
13 - PTL, LBN, TBN and CBN.

14 COMMISSIONER ARGETSINGER: This is distinguished
15 here. I think the Tribunal can distinguish what this is.
16 Mr. Chairman, I suggest we overrule it.

17 CHAIRMAN AGUERO: The objection is overruled.

18 BY MR. MIDLEN:

19 Q Mr. MacAllister, in Exhibit Number 2, do you know
20 who did the arithmetic?

21 A Yes. Robert Kennedy.

22 Q Will he be available to testify tomorrow with
23 respect to this exhibit as well as his own?

24 A That I can't answer.

25 MR. KENNEDY: Yes, I will. Be more than happy to.

1 BY MR. MIDLEN:

2 Q Mr. MacAllister, would you turn to CTC Exhibit
3 Number 10?

4 A I have it.

5 Q Page 2, which is a copy of page 39 of the 1986
6 religious broadcasting -- am I to understand that page 2 is
7 a continuation -- or actually page 39 of Religious
8 Broadcasting is a continuation of page 38 of Religious
9 Broadcasting, which lists the best TV programs?

10 A Yes, sir.

11 Q Do you recognize in any of these programs,
12 programs that have been produced by the Settling Devotional
13 Claimants?

14 A (Perusing document)

15 Q Well, I'll make it easy for you. Look
16 specifically at WYAH.

17 A Yes.

18 Q And whose station is that?

19 A CBN.

20 MR. MIDLEN: Your Honor, I don't have anything
21 further.

22 CHAIRMAN AGUERO: Commissioner Argetsinger?

23 COMMISSIONER ARGETSINGER: No, nothing.

24 MR. KENNEDY: I have nothing further.

25 CHAIRMAN AGUERO: Mr. MacAllister, thank you for

1 being with us, and have a good trip back to Florida.

2 THE WITNESS: Thank you.

3 COMMISSIONER ARGETSINGER: You can stay and listen
4 to the rest of the proceedings if you care.

5 THE WITNESS: I may do that for a little while.

6 (Whereupon, the witness was excused.)

7 CHAIRMAN AGUERO: We'll take a five-minute break.

8 (Whereupon, a short recess was taken.)

9 CHAIRMAN AGUERO: Back on the record.

10 Mr. Kennedy.

11 MR. KENNEDY: Thank you, sir. Our last witness--

12 the last one today -- I will be the last -- is Mr. Thomas

13 Larson, who has been here several times before.

14 Whereupon,

15 THOMAS A. LARSON

16 was called as a witness and, having first been duly sworn,

17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. KENNEDY:

20 Q Would you give us your name and address for the
21 record, please?

22 A My name is Thomas Larson, 6704 Rannoch Road,
23 Bethesda, Maryland 20817.

24 Q And, Mr. Larson, do you have in front of you CTC
25 Exhibit No. 3?

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1 A Yes, I do.

2 Q And is that your testimony?

3 A Yes, it is.

4 Q Are there any changes, corrections, additions or
5 deletions that need to be made?

6 A At the bottom of the first page it should say --in
7 the second sentence, CTC showed a 22.5 percent increase in
8 the number of distant systems carrying CTC programming from
9 '66 -- excuse me, 1986 to 1987.

10 MR. GOTTFRIED: What was the change?

11 MR. KENNEDY: I had written a note and made a copy
12 of it, so nothing has changed.

13 CHAIRMAN AGUERO: That's not what we have here.

14 MR. HARRINGTON: We have the corrected version.

15 BY MR. KENNEDY:

16 Q There should be a change though on page 2 of your
17 testimony?

18 A Okay, on page 2, the second paragraph should have
19 an introductory sentence saying that "In 1986, there were 24
20 full-time systems that carried CTC programming". Then after
21 that, "In 1987, there were changes from 31 to 29 Form 3
22 distant cable systems and one part-time distant Form 3
23 systems." Then change the six to eight, there were eight
24 Form 2 distant systems and followed by the sentence, "The
25 total fees generated from the carriage of CTC stations in

1 1987 was 319,804".

2 MR. MIDLAND: Would you give those numbers again?

3 THE WITNESS: 319,804.

4 MR. GOTTFRIED: Could you read the whole paragraph
5 again, so I can make sure I get it?

6 MR. KENNEDY: Would you like me to read it?

7 CHAIRMAN AGUERO: Do you have a copy there?

8 MR. HARRINGTON: It would be fine if Mr. Kennedy
9 would read it.

10 MR. KENNEDY: In 1986, there were 24 full-time
11 Form 3 systems carrying CTC programming. In 1987, there
12 were 29 Form 3 distant cable systems and one part-time
13 distant Form 3 system. There were eight Form 2 distant
14 systems.

15 MR. HARRINGTON: And read the total fees generated
16 from the carriage of CTC stations' programming.

17 MR. KENNEDY: In 1987, it was 319.804.

18 CHAIRMAN AGUERO: Mr. Kennedy, if you don't mind,
19 would you give to Mr. Ray there those changes for us to
20 have, and you will retype it, Mr. Ray.

21 MR. KENNEDY: (Handing documents)

22 COMMISSIONER ARGETSINGER: Just have a couple
23 xeroxes made and give them to counsel.

24 CHAIRMAN AGUERO: Mr. Kennedy, would you proceed?

25 BY MR. KENNEDY:

1 Q Okay, do you have before you CTC Exhibit No. 14,
2 the documentation report?

3 A Yes.

4 Q Are there any changes, corrections, additions, or
5 deletions in that?

6 A No, I had run an update in October, this was run
7 in August. There are no substantial changes except to fill
8 in the '87 information more completely. We were collecting
9 that data during October.

10 MR. KENNEDY: I have no other questions.

11 CHAIRMAN AGUERO: Anybody have any questions?

12 MR. HARRINGTON: I have one question on voir dire,
13 Chairman Aguero.

14 VOIR DIRE

15 BY MR. HARRINGTON:

16 Q Mr. Larson, when did you do the update on the
17 materials set forth in CTC Exhibit No. 14?

18 A On 14? That's dated October 13th.

19 Q And it is now the 25th of October. Have you
20 provided that update to counsel for the Settling Devotional
21 Parties?

22 A Yes, I have.

23 Q The updated, to CBN, or to counsel -- to Mr.
24 Midland, or any of the other attorneys for the Settling
25 Parties?

1 MR. KENNEDY: If I may interject, sir, we are not
2 going to use them. I got the update myself last week and
3 there wasn't enough time to make complete copies of
4 everything, so I would like to refer back to the original
5 one that everyone has.

6 MR. HARRINGTON: One final question along this
7 line.

8 BY MR. HARRINGTON:

9 Q Was the number \$319,804.00 which you offered in
10 the slight change that was made to your testimony a minute
11 ago, is that from the updated report, or is that based on
12 the original print that was provided to counsel for the
13 Settling Parties?

14 A I think it came from the original.

15 MR. HARRINGTON: No further voir dire.

16 DIRECT EXAMINATION (Resumed)

17 BY MR. KENNEDY:

18 Q Mr. Larson, I seem to have had my copy of your
19 testimony -- oh, here it is. Can you give us some
20 background information on -- we have already covered that.

21 MR. KENNEDY: I have no other questions of Mr.
22 Larson.

23 CHAIRMAN AGUERO: Mr. Harrington, please.

24 MR. HARRINGTON: Thank you, Mr. Chairman.

25 CROSS-EXAMINATION

1 BY MR. HARRINGTON:

2 Q Mr. Larson, who prepared the first draft of your
3 testimony?

4 A Mr. Kennedy.

5 Q And did Mr. Kennedy prepare the characterization
6 that is shown at the bottom of page 3 and again -- excuse
7 me, at the bottom of page 1 of Exhibit No. 3, and also, on
8 page 2 there is a 22.5 increase in the number of distant
9 signals?

10 A Yes, he did.

11 Q That is not your characterization?

12 A No, but I have gone over those numbers with him,
13 and I understand how they were arrived at.

14 Q Were they net numbers, or are those only numbers
15 showing systems that were added as distant signals? Were
16 systems that dropped carriage of a particular station
17 subtracted from the number to give you a net increase
18 number?

19 A It is my understanding that the number of systems
20 specifically increased from 31 to 38, and seven over 31 is a
21 22.5 percent increase.

22 Q Well, Mr. Larson, when you say it increased to 38,
23 in what accounting period would that have been?

24 A To '87.

25 Q Both accounting periods in '87, or only the first,

1 or the second?

2 A Either. If the system was carried in either half
3 of 1987, on a distant basis, then it was counted in '87.

4 MR. HARRINGTON: Let me place in front of you a copy of
5 a document which I will request be marked for identification
6 as Settling Devotional Claimants Cross Examination Exhibit
7 No. --

8 CHAIRMAN AGUERO: 1-X.

9 MR. HARRINGTON: 1-X.

10 (Handing document)

11 (Whereupon, the document was
12 marked for identification as
13 Exhibit No. SDC 1-X)

14 THE WITNESS: (Perusing document)

15 CHAIRMAN AGUERO: Do you have copies of that?

16 MR. HARRINGTON: We have lots. (Handing
17 documents)

18 BY MR. HARRINGTON:

19 Q Now, Mr. Larson, this was prepared based on
20 materials set forth in CTC Exhibit No. 14. What we did was
21 to go through Exhibit No. 14 and identify those stations
22 which were listed in the exhibit and show how many distant
23 systems were shown for -- in 1986, and in 1987. And the
24 only exceptions for that would have been KFCB and WOAY, in
25 which there was a change in the signal, they were not

1 carried in 1986, they were carried in 1987. And so we have
2 shown them as zero for 1986, even though the station may
3 have been carried, there was no programming for CTC on it in
4 1986, as we understand it.

5 Now, I would like you to take a look at that
6 document. Our calculations show that for 1987-1 there were,
7 as you testified, 38 distant systems carrying CTC stations-
8 - stations with CTC programming, but in 87-2, there were
9 only 25 and one part-time.

10 How do you explain that discrepancy?

11 A That is very easy to do. I did updates this
12 summer, since this report was done and the numbers are
13 comparable now.

14 Q But none of the updates have been provided to
15 counsel for the Settling Parties, is that right?

16 A That's correct, we just got these last week, a few
17 days ago.

18 Q Okay, and if you will look at the first column,
19 for example, WTKK -- this is on the second page.

20 A (Perusing document)

21 Q This is the Manassas station, that shows that it
22 was carried as a distant signal in 1986 by one system, but
23 by no distant signals in 1987. Were the numbers reduced
24 accordingly to reflect the diminution in carriage by various
25 stations?

1 A (Perusing document) I need a clarification,
2 should these column headers on here -- should they read 86-1
3 and 87-2?

4 MR. GOTTFRIED: You have two numbers for each
5 station.

6 BY MR. HARRINGTON:

7 Q Where the numbers are the same for both accounting
8 periods they show a single number, where they are different,
9 we have two entries, one being the first accounting and the
10 second being the second accounting period.

11 A I see, okay. I'm sorry --

12 Q Let's look at WTKK and look at Exhibit 14, and
13 let's examine that.

14 A (Perusing documents)

15 MR. GOTTFRIED: We are looking at the original
16 version?

17 THE WITNESS: Right.

18 BY MR. HARRINGTON:

19 Q That's starting on page 81 of the exhibit. Now,
20 if you will go through from page 81 and page 82, and on to
21 page 83 --

22 A (Perusing document)

23 Q Are any distant signals identified there?

24 A Yes, on page 82 in Rockville, Maryland, the system
25 was carried as partially distant, it was local to some

1 subscribers and distant to others of the subscribers.

2 Q How can you tell that?

3 A The "X".

4 Q Okay, let's go through -- now we have this page in
5 front of us, it would be useful to figure out what all of
6 these column headings mean, because I had some difficulty
7 with them. Okay, call sign, I presume that is the call sign
8 of a particular station that may carry programming that CTC
9 syndicates, is that right?

10 A Correct.

11 Q And that list of stations was provided to you by
12 CTC?

13 A That's correct.

14 Q You didn't have an independent determination of
15 whether those stations, in fact, carried CTC programming?

16 A That's correct.

17 Q And the channel would be the channel -- CH is the
18 channel the station is carried on?

19 A That's correct.

20 Q City would be the city of license?

21 A That's correct.

22 Q And so in WTKK it would be Manassas, the state
23 would be Virginia, ST?

24 A That's right.

25 Q And then station type, independent?

1 A That's right.

2 Q That means it is an independent as compared to a
3 network station?

4 A Right.

5 Q Okay, then there is a column headed STK, what does
6 that mean?

7 A This is really two columns, the first one is state
8 and market, the HK in this report stands for market, where
9 one under that column means Top 50, the two means second 50,
10 the three means smaller markets, and then the four means
11 outside all markets.

12 Q Okay. And what does AC mean?

13 A Accounting period.

14 Q Okay, and that relates to the particular statement
15 of account period in question?

16 A That's correct.

17 Q Now, what do the various letters shown there
18 represent?

19 A In this specific report, and all reports like
20 this, F stands for 86-1; G is 86-2; H is 87-1; and I is 87-
21 2.

22 Q So that all entries with the entry under HC next
23 to them F or G relate to the 1986 year, and not to the 1987
24 year?

25 A That's correct.

1 Q And they should have no basis then in the
2 determination of what the '87 pool should be?

3 A Well, only for comparison, if you are showing a
4 decrease or increase.

5 Q Okay. Remit, what does that column represent?

6 A Remit is the number assigned at the Library of
7 Congress as each statement of account comes in, it is given
8 a number.

9 Q So that's the Library of Congress number?

10 A That's correct.

11 Q Okay. What does -- is that BC?

12 A Basis of carriage.

13 Q What entries would you see in that column?

14 A Normally, you see Ls and Ds, standing for Local or
15 Distant.

16 Q Now, on this page, page 82, there is an X entry,
17 what does that represent?

18 A An X entry means that it is distant -- it is
19 partially distant, meaning that in this case the cable
20 system reported that station WTKK in Manassas was local to
21 some of their subscribers in Rockville and distant to
22 others.

23 Q Okay, and is the classification L, D, or X as the
24 case may be, based solely on the representation made by the
25 cable operator in his statement of account, or is that

1 independently determined by you, or one of the people
2 working for you?

3 A It is as recorded in the statement of account.

4 Q Okay. Now, do all cable operators file the same
5 type of statement of account?

6 A No, they file a Form 1 or Form 2, or Form 3.

7 Q And in 1987, was there a combined Form 1/2?

8 A Form 1 and 2 were the same physical form, yes.

9 Q So, basically, there were two types of forms, Form
10 1/2 or Form 3, is that right?

11 A That's correct.

12 Q Okay. Did Form 1/2 filers identify whether the
13 signals that they carried were distant, or local?

14 A No, they did not.

15 Q So there was no way for you to tell from the face
16 of the form at least whether the signals were local or
17 distant?

18 A That's correct.

19 Q And in the case of Form 3 filers, the systems
20 self-identified what was a distant, or what was not a
21 distant signal, is that right?

22 A That's correct.

23 Q And it was your best attempt to replicate that in
24 this report?

25 A That's right.

1 Q Are there any instances that you can tell me where
2 there were errors made in that identification?

3 A I am sure there are errors, there always are. We
4 do our best to make it as much like reported as possible,
5 occasionally an error will creep in.

6 Q Okay, I will get back to that point in a minute,
7 but I want to finish going through the form. There is a
8 listing there for subscribers, what does that column
9 represent?

10 A The number of households that the cable system
11 reports as subscribers.

12 Q And that is straight off either Form 1/2 or Form 3
13 filings by the cable systems?

14 A That's correct.

15 Q And for receipts, what does that column represent?

16 A The total basic receipts as reported by the cable
17 system.

18 Q Well, of their receipts for purposes of
19 determining copyright royalty payments?

20 A That's correct.

21 Q And royalties, what does that column represent?

22 A Again, it is the royalty that is reported and paid
23 by the cable system.

24 Q Okay. Now, there is a group of columns headed
25 Generated Fees, or Codes. The first one is TOT GEN, what

1 does that represent?

2 A This is total fee generated.

3 Q How was that computed?

4 A Well, it is easier to give a hypothetical example.
5 If a system is carried, say, by four independent stations
6 and they pay a total royalty of \$10,000.00, when there are
7 four DSEs, then each station that has one DSE gets one-
8 fourth of the \$10,000.00 allocated to it. So, it is based
9 on DSE as a ratio of the total DSE of the system.

10 Q Okay. Now, there is also a column headed 3.75,
11 what would that represent?

12 A That column shows for distant stations either the
13 permitted code, in this case a G on page 82, or a dollar
14 amount for 3.75 purposes.

15 Q So, if a system paid special royalties, or so-
16 called 3.75 percent royalties those would be identified and
17 allocated under your fee generation analysis in the 3.75
18 column?

19 A They would be in the 3.75 column, yes.

20 Q But if, for example, there were two signals that
21 required a 3.75 percent payment by a cable system, you would
22 allocate that 50-50 between the two?

23 A For fee generated purposes, no. What I do -- this
24 happens because it is hard to tell which station is really
25 permitted under FCC rules, for example, for a total count.

1 And what I do is for fee generated purposes, I do not look
2 at either 3.75 or Syndex, I look at total royalty, total DSE
3 and the DSE of individual stations. And I need those three
4 numbers to calculate a fee generated number for a station.

5 Q Do not cable systems identify whether they are
6 required to pay 3.75 percent, or Syndex royalties?

7 A Yes.

8 Q They do. And how do you -- I take it that you
9 take the amount that was actually paid for that particular
10 system in 3.75 percent royalties, for example, and somehow
11 allocate that back, what, to all the distant signals that
12 were carried?

13 A That's right.

14 Q I see. So you don't make an attempt to -- for
15 example, if a system had long been carrying a local
16 independent station and wanted to add one in excess of the
17 quota, so it added, say, WTBS, you don't ascribe all the
18 3.75 fee to WTBS?

19 A That's correct.

20 Q Do you think that fairly represents what the cable
21 system thinks of as the marketplace value of WTBS in a
22 situation like that?

23 A I don't know if it is fair, or not. We discussed
24 this a lot when I first started doing this eight years ago,
25 and this is the way that we have always done it.

1 Q Did you ascribe any 3.75 percent royalties to
2 carriage of stations that had CTC programming on them?

3 A There was no 3.75 on any CTC station.

4 Q So of some several hundred thousands of dollar of
5 3.75 percent money that would go to the Devotional Claimants
6 as a group, your study would show no entitlement of CTC to
7 any portion of that amount?

8 A I am troubled by the word "entitlement", but there
9 was no 3.75 paid by any cable system that carried any one of
10 these stations on a distant basis.

11 Q Okay. And do you know if any stations carrying
12 other devotional programming represented by the claimants in
13 this room resulted in payment of 3.75 percent royalties,
14 under your own methodology?

15 A I believe so.

16 Q For example -- I don't believe you were here
17 today, but Dr. Clark testified that Old Time Gospel Hour
18 appears on WTBS on a weekly basis. Is WTBS the subject of
19 3.75 percent royalties?

20 A Yes, they are.

21 Q Substantial royalties, am I correct?

22 A Yes, sir.

23 MR. KENNEDY: Objection. He is going beyond the
24 scope of Mr. Larson's testimony which pertains to CTC.

25 MR. HARRINGTON: I don't have anything -- I think

1 the ruling should be very clear here, the whole issue of the
2 fee generation analysis has been put into issue by CTC.
3 They are putting it at issue through Mr. Larson, and I think
4 I have a fair right to challenge and question that issue.

5 CHAIRMAN AGUERO: The objection is overruled.

6 Mr. Larson.

7 THE WITNESS: Can you repeat the question?

8 CHAIRMAN AGUERO: Do you wish to repeat the
9 question?

10 MR. HARRINGTON: I think it was answered, to be
11 honest.

12 MR. KENNEDY: I objected after he answered the
13 question.

14 BY MR. HARRINGTON:

15 Q Let's turn to Syndex. Now, you have a column here
16 headed Syndex, what does that stand for?

17 A It corresponds very closely to the 3.75 column,
18 except it is for the Syndex money.

19 Q And in looking again at page 82, which I just have
20 open in front of me, there is an entry of \$22.00 under the
21 Syndex column, across from the Rockville -- is that the
22 Rockville system -- no, that's Prince George's, I think.
23 Would that represent your computation of \$22.00 of Syndex
24 funds?

25 A Yes, that's correct.

1 Q Are you aware that this Tribunal has allocated
2 zero Syndex dollars to the Devotional Claimants as a whole?

3 A No.

4 Q You are not aware of that?

5 A No.

6 Q For example, if you look at that column where
7 there is a 54 under total generated and a 22 under Syndex,
8 would the 54 include the \$22.00 under Syndex, or would that
9 be separate? What I am getting at is in the totals that you
10 have given us, for total fees generated, does that include
11 Syndex dollars?

12 A Yes, it does.

13 Q It does. So, if we were to -- if the Tribunal
14 were to attempt to adjust this to take into account the fact
15 that there is no award to the Devotional on Syndex funds,
16 the easy way to do that would be simply to subtract the
17 amount of the Syndex dollars from the total fees generated?

18 A I am not really sure that that would be fair
19 arithmetically, because there are two different
20 calculations, and one doesn't add to the other. I don't add
21 Syndex plus 3.75 to get the total.

22 Q Let's turn to page 86, where your totals do
23 appear.

24 A (Perusing documents)

25 Q Now, you show there total generation of -- I am

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1 looking at the second accounting period in '87--
2 \$161,219.00 under total generated and under Syndex
3 \$33,858.00. Now, does the \$161,219.00 include the
4 \$33,858.00, or doesn't it?

5 A It is really difficult to say, because what -- the
6 Syndex for an individual cable system is calculated and
7 distributed between all those stations for which Syndex was
8 paid. For example, suppose there was only one station for
9 which Syndex was paid, it might get \$10,000.00 in Syndex.
10 However, there may be \$100,000.00 in total royalties and
11 suppose there were 20 distant stations, including the one
12 that had paid Syndex. In this case for the fee generated
13 column -- this is an extreme example -- the fee generated
14 column, the total fee generated for that station would be
15 \$4,000.00, \$5,000.00 but it would still have the \$10,000.00
16 Syndex under the Syndex column, because that's the only
17 station for which Syndex was paid.

18 That's why I have trouble agreeing that this is a
19 part of that.

20 Q Well, how does the Tribunal determine what portion
21 of the total generated column, were the Tribunal to use this
22 methodology, which it has never used in the past -- were it
23 to use this methodology, how would it adjust the numbers to
24 eliminate the Syndex funds that are included?

25 A I think that if we were looking at the US total,

1 then it would come out just right.

2 Q What would the US total be?

3 A For '87?

4 Q Yes, 87-2?

5 A The total royalties, as I recall, was somewhere
6 around \$180 million -- let me look -- for 87-2 the total
7 Syndex was, according to my records, somewhere around \$16
8 million.

9 Q Okay, and of that --

10 A For 87-2.

11 Q Of that, all the stations that carried CTC
12 programming generated \$161,000.00 under your methodology of
13 royalties, is that right?

14 A The 161 is for distant full-time, yes.

15 Q And does that include Form 1, 2 and 3?

16 A Primarily, it is just Form 3, because it is Form
17 3s that report distant full-time.

18 Q Are there no Form 1 and 2 listed in this analysis?

19 A Yes, there are Form 1 and 2 listed in this
20 analysis.

21 Q How did you determine whether they were distant
22 signals, if you listed them in this analysis and the cable
23 systems didn't self-identify?

24 A For the most part, they are listed as local,
25 however, there have been some cable systems who are very

1 clever in reducing their reported gross receipts, thereby
2 changing their status from a Form 3 to a Form 2. They were
3 previously reported distant carriage. If I catch that, I
4 carried it forward to the present.

5 Q Okay, let's go back to page 82, because I am still
6 intrigued by this page.

7 A (Perusing document) Now, for example, there under
8 -- near the bottom of the page, the Telesat Communications,
9 Inc., Prince William, Virginia, there is total fees
10 generated in one place of \$120.00, another 60, another
11 \$1631.00, yet in each case you have identified that as a
12 local signal with zero DSEs. Now, how do you get from zero
13 DSE local signal to the generation of fees?

14 A For those cable systems that report no distant
15 carriage, I allocate the fees equally between stations.
16 So there is public, network, whatever it is, if there is no
17 DSE to use, then I count the number of stations and allocate
18 equally.

19 Q So that even though -- so that what you are saying
20 is that the Prince William system carried no distant
21 signals, but paid the minimum fee, and you have allocated to
22 all stations, even though they are not distant, is that
23 correct?

24 A That's correct.

25 Q Okay, let me go to a couple specific examples of

1 how you determined carriage of particular -- or whether or
2 not a signal was a distant signal. I am trouble, quite
3 frankly, by this, because it is a very difficult process,
4 and I, myself, who do not do a lot of cable work, have
5 problems making this determination. Let's turn to WOAY, in
6 your report, if you will, please?

7 A (Perusing documents)

8 Q That's Oak Hill, West Virginia, and it starts--

9 CHAIRMAN AGUERO: Page 60?

10 MR. HARRINGTON: Yes, page 60.

11 BY MR. HARRINGTON:

12 Q Now, on page 2 of your testimony you testified
13 that WOAY was carried by three distant systems and that it
14 was not carried in 1986, or did not feature CTC programming
15 in 1986, is that right?

16 A (Perusing document)

17 Q Look at the top of page 2, you say, "Two of the 11
18 stations were carried by distant signals, one of which is
19 WOAY, Oak Hill, West Virginia".

20 A Uh-huh.

21 Q And the 11 stations referred to there are the
22 stations shown on the previous page to have been carried
23 -- or carried CTC programming in 1987, but not in 1986, is
24 that right?

25 A Yes, that's right.

1 Q So the other nine stations shown on the first page
2 of CTC Exhibit No. 3 weren't carried by distant cable
3 systems at all, is that right?

4 A I think that's right.

5 Q There were only two that were carried, that's all
6 we have been able to determine. Okay, that's three-sevenths
7 of the increase, there is a total increase of seven systems,
8 and this represents almost half of that, am I correct, these
9 three systems carrying WOAY?

10 A Yes.

11 Q Now, one of the ones that you have identified as
12 being distant is the White Sulphur Springs, West Virginia
13 system -- (perusing document) -- that would be on page 65.
14 You have that as distant under column BC.

15 A Okay.

16 Q Now, did you examine the statements of account of
17 the White Sulphur Springs system to determine whether they
18 classified that as a distant signal?

19 A Me, personally? No.

20 Q Did anyone in your office make that determination,
21 to your knowledge?

22 A They should have. I see that it is a -- at least
23 on these reports -- it is a very small system.

24 Q Well, is one of the periods for which it is
25 identified that this is a distant signal the first

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1 accounting period of 1987?

2 A (Perusing document) Yes.

3 Q Let me show you the statement of account for the
4 White Sulphur Springs, West Virginia cable system for the
5 first accounting period of 1987, taken from the files of the
6 Copyright Office of the United States.

7 (Handing document)

8 I'll let you examine that for a minute, Mr.
9 Larson.

10 A (Perusing document)

11 Q Have you had a chance to examine that, Mr. Larson?

12 A Yes.

13 Q Does that form anywhere identify WOAY as being
14 carried as a distant signal?

15 A No, it looks to me as if this is a different cable
16 system, it serves the area outside of White Sulphur Springs,
17 instead of White Sulphur Springs itself, as I look at the
18 statement of account.

19 Q How would you tell that?

20 A Whoops, I've got the same -- it's got to be this
21 one -- (perusing document)

22 Q But there is no indication on that form that WOAY
23 was carried as a distant signal, is there?

24 A It is listed as being carried.

25 Q But not as a distant signal -- it doesn't identify

1 one way, or the other, does it?

2 A Correct.

3 Q Now, are you familiar with making the
4 determination of whether a signal is distant, or local on a
5 particular cable system?

6 A Yes.

7 Q Okay. Now, is it not true that if a signal is
8 significantly viewed in a particular county of the United
9 States, that all cable systems within that county may treat
10 that signal as a local signal and not as a distant signal?

11 A That's my understanding, yes.

12 Q Okay. And if you would like to check the map, you
13 can, in the back of this book I will hand you, but would you
14 take my word for it that White Sulphur Springs, is in
15 Greenbrier County, West Virginia?

16 A And Oak Hill is also?

17 Q Oak Hill is not, Oak Hill is in a different
18 county.

19 A Oh, would that make it distant --

20 Q Let me raise the question. Let me show you a list
21 of significantly viewed signals and the counties in West
22 Virginia, and I call your attention to Greenbrier County.

23 A (Perusing document)

24 Q This is from the 1980 Cable Atlas, which is a
25 commonly used resource to determine distant signal carriage

1 within the cable television industry. Are you familiar with
2 that source, Mr. Larson?

3 A Yes.

4 Q Now, for Greenbriar County, West Virginia, what is
5 the first entry of significantly viewed signals?

6 A WOAY, Channel 4.

7 Q So am I not correct then that that is, in fact, a
8 local signal and not a distant signal?

9 A That's correct.

10 Q And so one of the seven that was being claimed as
11 an increase in signals is not, in fact, a distant signal at
12 all?

13 A It would appear that way.

14 Q Okay.

15 MR. KENNEDY: If I could just have a second.

16 BY MR. KENNEDY:

17 Q Also look in the same station, WOAY, the entry for
18 Peterstown, West Virginia.

19 A (Perusing document)

20 Q That's on page 64.

21 CHAIRMAN AGUERO: Sixty-four?

22 MR. KENNEDY: Yes, sir.

23 BY MR. KENNEDY:

24 Q Do you see that entry?

25 A Yes.

1 Q Now, that entry shows that the signal of WOAY, Oak
2 Hill, was local in one reporting period, and distant in two
3 other accounting periods, is that right?

4 A Uh-huh. That's what is shows here, I am unable to
5 explain why.

6 Q And from the amount of revenue shown can you
7 determine whether or not that system would file a Form 1/2,
8 or Form 3?

9 A Form 1.

10 Q Form 1. So, it would not have identified whether
11 the signal was distant or local either, would it?

12 A That's right.

13 Q And, in fact, if you would like to, I can show you
14 the statements of account, and they don't tell you whether
15 it is distant, or local?

16 A I believe that.

17 Q Now, --

18 A The fees generated are like \$4 or \$5.

19 Q I understand, but again it is one of the added
20 signals that CTC is talking about as an added distant signal
21 that gives this tremendous percentage increase, and that's
22 why I am focusing on it, because CTC at least thinks this is
23 a very important issue. And I want this fully explored for
24 the Tribunal.

25 So let's look at the map, if you would, the 35-

1 mile zone map for West Virginia.

2 A For Peterstown -- relative to Peterstown?

3 Q Yes, if you would, please.

4 A (Perusing document)

5 Q Do you have that in front of you, the one that
6 would show whether a station -- a community is within 35-
7 miles of a particular city of license of a television
8 station? Do you know what I am referring to?

9 A Yes.

10 Q Okay. Now, accept for a moment, and I will supply
11 the maps later to the Tribunal to demonstrate this in
12 rebuttal. But assume for a moment that Peterstown is located
13 approximately at the conjunction of Monroe and Mercer and
14 Sommers County, West Virginia. So it is located very near
15 there in Monroe County, where the three meet. Do you see
16 that?

17 A Okay.

18 Q In the southern part of West Virginia?

19 A Uh-huh.

20 Q Is that not within the 35-miles zone for
21 Bluefield, West Virginia?

22 A Yes.

23 Q Okay. Are you aware that Oak Hill is part of a
24 so-called hyphenated market, that includes Bluefield as one
25 of the other communities in the hyphenated market?

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1 A I will accept your word on it.

2 Q In fact, you saw in the list of significantly
3 viewed signals it was listed as Bluefield, Oak Hill and
4 Beckley, is that not right?

5 A That's right.

6 Q And is it not true that if you are within 35-miles
7 of one community that is designated as a community in a
8 hyphenated market, that you must carry those stations
9 licensed to all communities in that hyphenated market?

10 A That's correct.

11 Q So that if I am right that Peterstown is within
12 35-miles of Bluefield, then is not an Oak Hill station also
13 a "must carry" and, therefore, a local signal in Peterstown?

14 A Yes, it is.

15 Q And that's the second of the seven, isn't it?

16 A Yes, it is.

17 Q Now, let's turn to the signal of KTBW which is
18 -- is that the Trinity Broadcasting station in California?
19 It is listed as Fontana, and I have seen two different
20 cities of license, so I wasn't quite sure about that. Do you
21 know what is the city of license of KTBW?

22 A Fontana.

23 Q This would be on page 12. And in particular let's
24 look on page 12 at the Cammerillo, California system. Now,
25 is Cammerillo listed as a distant signal on that report?

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1 A (Perusing document) Yes, in 87-1.

2 Q And --

3 A And in 87-2.

4 Q So that is another one of the added signals that
5 was not a distant signal counted in '86, but it was in '87,
6 am I right?

7 A This is apparently a difference in reporting.

8 Q But is it one of the seven?

9 A Yes, it is.

10 Q Okay. Let me find my notes -- I've got four
11 copies of the statements -- pieces, or the major portions of
12 the statements of account for the Cammerillo system, all on
13 SA-3 forms from the Copyright Office. And I will show them
14 to you -- (handing documents). And I would ask you if I am
15 correct that only in one of the four, not two of the four,
16 only in one of the four does the system identify the signal
17 of KTRN as a distant signal?

18 A (Perusing document)

19 Q Why don't you check those over, Mr. Larson, and
20 see if I am correct?

21 A In 86-1 it is not reported as distant, in 86-2 it
22 is not reported as distant, in 87-1 it is not reported as
23 distant, in 87-2 it is reported as distant.

24 Q Now, under what circumstances would a cable system
25 change from being a local signal in one half of a year to

1 being a distant signal in another half of the year?

2 A They got caught.

3 (Laughter)

4 BY MR. HARRINGTON:

5 Q Who caught them?

6 A Sometimes we catch them, me and my company;
7 sometimes they are advised by their attorneys to "you'd
8 better report this system", sometimes they make mistakes.

9 Q Did you write to the Cammerillo system in '87 and
10 tell them there was an error?

11 A I don't recall that. I bring to the attention of
12 MPAA many times things that look suspicious.

13 Q But if they had made a back filing wouldn't they
14 normally have caught up to their earlier statements of
15 accounts and amended those? Wouldn't that be typical?

16 A Yes, and it is not in here.

17 Q Would your study that is used to create these
18 printouts, would they compensate for amendments?

19 A Hopefully, eventually we catch up with those.

20 Q Well, let me show you the 1989 Cable Station
21 Coverage Atlas, the same source I showed you earlier, but
22 for a different period. This one is subsequent to 1987, and
23 I assume would include the period. I would like you to
24 first look at the 35-mile zone maps in the back of the book,
25 for Cammerillo, California, which is in Ventura County.

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1 A (Pernsing document) I forgot my glasses, I cannot
2 see it.

3 Q Well, I will present evidence in rebuttal then
4 that will show you, Mr. Larson, that the signal is outside
5 of all television markets. That being the case, is it not
6 true then the city of Cammerillo, where the cable system is
7 located, is outside of all 35-mile zones, therefore, outside
8 of all television markets?

9 A Right.

10 Q Now, if I also presented you with a map that
11 showed you that Cammerillo is within, even though it is
12 outside of all TV markets, is within the KTBH predicted
13 Grade B Contour, what would that tell you about its carriage
14 status?

15 A They could probably report is as over.

16 Q In fact, that's exactly the situation those maps
17 will show you, that the signal is outside of -- the system
18 in Cammerillo is outside of all TV markets, yet within the
19 Grade B Contour. And that's another one of the seven which
20 is a phantom increase, isn't it, Mr. Larson?

21 A I don't know what happened in that cable system.
22 For some reason -- my people had to go through and change,
23 to make local to distant, but they reported.

24 Q Would they have changed it for the first
25 accounting period of 1987, even though the licensee didn't

1 himself report it for that period?

2 A In that case my people -- we may have been using
3 the '87-2 as the basis to create '87-1.

4 Q Why wouldn't you have done it for 86-1 and 2?

5 A It is a timing problem. I am always creating data
6 for missing data.

7 Q But in some cases you go back and in some cases
8 you don't?

9 A That's correct.

10 Q And in some cases the information is accurate, and
11 in some cases it is inaccurate, is that right?

12 A Well, I went ahead, instead of backwards, I went
13 ahead looking at 87-2, to pick up that distant carriage.

14 Q You haven't gone through this report and
15 identified those -- first off, you didn't do what some of
16 us might have done, and strike all of those that refer to
17 local signals, where there is no fee generation, throw all
18 of those out as irrelevant, did you?

19 A (No response)

20 Q So that we have page after page, many of which
21 show no distant carriage at all, yet they are in your
22 report.

23 A The reason is that many of these reported here as
24 Form 1/2 and local could be distant.

25 Q But you don't know?

1 A On a specific case I don't know.

2 Q And nationwide what percentage of -- you are
3 saying could be distant, you are referring to Form 1/2
4 systems, is that right?

5 A That's correct.

6 Q And what percentage of all the royalties generated
7 in 1987 were from Form 3 systems, and what was from Form 1
8 and 2?

9 A It is roughly 95 percent for Form 3 and 5 percent
10 for Form 1/2.

11 Q So, that all of these entries of zero, zero, for
12 local and zero -- or "L"s for local, and zero, zero, zero
13 for DSE, really, at most, might somehow reflect in some
14 cases, instances where -- involving 5 percent of the fund
15 nationwide for all TV stations, is that right?

16 A That's right.

17 Q And CTC certainly isn't found on the majority of
18 the cable systems in the United States, is it?

19 A No.

20 Q How many cable systems carry CTC programming
21 altogether on a distant basis?

22 A On a distant basis it is somewhere between 35 and
23 40.

24 Q Between 35 and 40, and of that -- and nationwide
25 how many cable systems are there that carry distant

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1 programming?

2 A How many cable systems are there that carry any
3 distant programming?

4 Q Right.

5 A I would have to say virtually all of them.

6 Q Would it be thousands?

7 A Yes.

8 Q So we are talking about somewhere of 30 out of
9 thousands?

10 A Thirty out of 10,000.

11 CHAIRMAN AGUERO: Ten thousand.

12 MR. HARRINGTON: Ten thousand.

13 BY MR. HARRINGTON:

14 Q Now, we've established at least for three of the
15 signals that there is some question, and I think we have
16 demonstrated in the case of two pretty clearly that they are
17 not distant signals. Would you ask the Tribunal to make an
18 award based on your own testimony, your own exhibit with
19 regard to those systems which are not really distant at all?

20 A Well, I wouldn't ask the Tribunal to make an
21 award, however, I would change my testimony for this case to
22 reduce the number from seven to five.

23 Q And maybe four?

24 A Possibly four, I don't think so.

25 Q And if we looked at still more there might have to

1 be a further amendment, is that right? You haven't checked
2 all of the ones that are listed as distant, to see if they
3 were, in fact, distant --

4 A But you have.

5 Q No, I haven't, I didn't have that much time.

6 A I don't know.

7 Q You have not checked them personally?

8 A Not personally.

9 Q Do you know if the 119 stations that are used by
10 MPAA in its sample, are checked by you, or any other source
11 to determine that the systems that are used in the Nielsen
12 study are, in fact, distant signals?

13 A Those are checked very thoroughly by me and Mr.
14 Cooper, and Marcia Kessler.

15 Q So there are three checks on those. And in this
16 case there were none?

17 A I prepared the report from the data that was in
18 the data base.

19 Q Would you characterize your report as being one
20 based purely on fee generation?

21 A No, I would base it on what is in the statement of
22 account.

23 Q Well, isn't this a fee generation analysis? Isn't
24 that what the whole last three columns are about?

25 A Not at all. It is for many, number of

1 subscribers, total distant subscribers, the total -- fee
2 generation, also. Primary for number of systems, number of
3 subscribers, the number of distant subscribers and fee
4 generated.

5 Q And you recognize that the Tribunal has repeatedly
6 rejected fee generation as a methodology?

7 A Yes, I have read that.

8 Q For example, let's go over a couple of points with
9 respect to, particularly, how fee generation operates. If
10 you have a cable system that paid \$1,000.00 in fees, one of
11 them was WT -- carried two distant signals, one was WTBS,
12 and one was WCLF, which is an independent, which is owned by
13 CTC. Would you have divided the \$1,000.00 in half and
14 allocated \$500.00 to each?

15 A That's correct.

16 Q Have you done any research whatsoever that shows
17 that cable operators would value the two signals such as
18 that, WTBS and WCLF equally?

19 A The only analysis I have done like that was to
20 rank television stations according to the number of cable
21 systems that were carrying them on a distant basis.

22 Q And which is the most carried television station?

23 A WTBS by far.

24 Q And WTBS includes programs such as Jerry Falwell's
25 program?

1 A I don't know that personally.

2 Q It has been testified to today. And is WOR
3 another one of the most popular stations in America?

4 A I believe WOR is third, after WGN.

5 Q Okay. And are you aware that WOR carried the 700
6 Club in 1987?

7 A No.

8 Q Do you weight in your fee generation analysis the
9 amount in the fees generated column, based on which are the
10 most popular stations?

11 A No.

12 Q They are unweighted?

13 A That's correct.

14 Q Now, another point I want to get clear, from your
15 own analysis, and not from that done by Mr. Kennedy, when
16 you put fees generated in this column, that is for all the
17 programming on a particular station, is that right?

18 A That's correct.

19 Q So, if CTC has one program that lasts an hour a
20 week, it is only a small part, perhaps, of a particular
21 station's fee generation, assuming you use that methodology?

22 A That's correct, there is no programming taken into
23 account in any of this.

24 Q Now, just a second --

25 CHAIRMAN AGUERO: Let's take a five-minute recess.

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1 (Whereupon, a short recess was taken)

2 CHAIRMAN AGUERO: Back on the record.

3 Mr. Harrington, would you proceed, please?

4 MR. HARRINGTON: Yes.

5 First, let me place in front of the witness what
6 has previously been exchanged as CTC Exhibit No. 6.

7 BY MR. HARRINGTON:

8 Q Would you examine that?

9 A (Perusing document) Yes.

10 Q I just want to get this clear, you did not prepare
11 Exhibit No. 6, did you, Mr. Larson?

12 A That's correct.

13 Q And you are not sponsoring Exhibit No. 6, are you?

14 A No, I am not.

15 Q So if I have questions about it, I should address
16 those to Mr. Kennedy?

17 A Yes.

18 Q He prepared it?

19 A Yes, that's correct.

20 Q That's fine. That's all I have on that.

21 The final area of questions -- I just wanted to
22 get clear again your fee generation methodology, let's say a
23 cable system carried three distant signals and it was a Form
24 3 system, a larger system. Would they pay for the carriage
25 of all three signals, exactly the same amount, or is there,

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1 in fact, a sliding scale where you pay a higher percentage
2 of revenues for the first one or two signals --distant
3 signals and a lower percentage for the third, or fourth
4 signal?

5 A Form 3 systems pay higher for the first three, or
6 the first X-number and then it is a sliding scale.

7 Q A sliding scale?

8 A Yes.

9 Q And your methodology does not take into account
10 that sliding scale, does it?

11 A That's correct, because there is no way to
12 identify which is first.

13 Q You make no attempt to do it either
14 chronologically, or to contact the system and ask them to
15 tell you which is the most important signal?

16 A That's correct, we do not.

17 MR. HARRINGTON: That's all I have. Thank you.

18 CHAIRMAN AGUERO: Mr. Kennedy?

19 MR. KENNEDY: Yes, I have a couple of questions.

20 REDIRECT EXAMINATION

21 BY MR. KENNEDY:

22 Q Mr. Larson, if you would take their cross-
23 examination Exhibit No. 1-X --

24 MR. HARRINGTON: Oh, by the way, just for the
25 record, 1-X has not been offered, and will not be offered

1 through this witness. It may be offered later.

2 MR. KENNEDY: Can I cross-examine him of this
3 though?

4 CHAIRMAN AGUERO: Yes.

5 BY MR. KENNEDY:

6 Q Two of the WOAY systems, where that is now instead
7 of three, there are one, is that correct?

8 A (No response)

9 MR. KENNEDY: We dropped two, right, Mr.
10 Harrington?

11 MR. HARRINGTON: That's correct.

12 MR. KENNEDY: Okay.

13 BY MR. KENNEDY:

14 Q So now we have one --

15 A I am confused, WOAY was listed in both halves of
16 '87.

17 Q You are absolutely correct, it was distant in
18 1986, and also, in 1987.

19 MR. HARRINGTON: They were not shown in '86
20 because they didn't carry CTC programming in '86, so it
21 would not have been fair -- you didn't count it. It was not
22 counted, as I understand it.

23 MR. KENNEDY: In the computations? That's
24 correct.

25 MR. GOTTFRIED: Take a look at page 86 -- 65, I'm

1 sorry.

2 THE WITNESS: Okay, yes. I was thinking of KTBN.

3 BY MR. KEINEDY:

4 Q If you strike two from the total at the end, that
5 makes it 36, instead of 38, is that correct?

6 A That's correct.

7 Q And if you take the lower number from 86-2 and
8 compare it with the 36 number from 87-1, it leaves a
9 difference of three, is that correct?

10 A That's correct.

11 Q And three divided by 33?

12 A Is 9 percent.

13 Q So the information at the bottom of his exhibit
14 there, where it says 23.5 percent systems, is that
15 reasonable, or is that totally out of line?

16 A Well, it looks out of line. Also, I am bothered
17 by the fact that it uses 87-2 as a comparison because in
18 this report I didn't have the data in yet, and it seems to
19 me you ought to use either 87-1 or 87-2. Does that seem
20 clear?

21 Q Whichever is greater?

22 A Yes.

23 Q That seems clear to me.

24 MR. KEINEDY: I don't have any other questions.

25 CHAIRMAN AGUERO: Commissioner?

1 COMMISSSTONER ARGETSTINGER: No.

2 MR. HARRINGTON: Is recross appropriate on the
3 questions he asked on redirect?

4 CHAIRMAN AGUERO: Yes.

5 RECROSS-EXAMINATION

6 BY MR. HARRINGTON:

7 Q I just had a question for you, Mr. Larson. The
8 criticism related to the fact that you used 87-2 figures,
9 but those are the only figures for 87-2 that were provided
10 by CTC to the Settling Devotional Parties, is that not
11 correct?

12 A That's correct.

13 Q And if you took the two figures based on your own
14 report and averaged them, it would still show a decrease in
15 carriage, wouldn't it, the 38 and the 25?

16 A If these numbers are correct. If you are
17 comparing '86 in general to '87 in general, then the missing
18 data in the '87-2, it seems to me you should use the 87-1
19 data.

20 Q That also raises a question as how valid the how
21 report is, isn't it as to 87-2?

22 A As to 87-2, yes.

23 MR. HARRINGTON: Thank you.

24 CHAIRMAN AGUERO: Commissioner?

25 COMMISSIONER ARGETSINGER: No.

1 CHATMAN AGUERO: Well, this concludes the
2 proceedings this afternoon. We will be here tomorrow
3 morning at 10:00 o'clock with Mr. Kennedy.

4 (Whereupon, the witness was excused)

5 (Whereupon, at 4:10 p.m., the hearing was
6 recessed, to reconvene at 10:00 a.m., Thursday, October 26,
7 1989.)

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Before: MARIO F. AGUERO, CHAIRMAN

Date: OCTOBER 25, 1989

Place: WASHINGTON, D.C.

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to type-
writing.

Phyllis Young

DISTANT SYSTEMS

1986

KDTX 0
 KFCB 0
 0
 KITV 0
 KLUJ 0
 KNAT 0
 KNLC 0
 KPAZ 0
 KTBN 2
 2
 KTBO 0
 1
 KTBW 1
 0
 KYFC 3
 3
 WCFC 5
 5
 WCLF 2
 2
 WDLI 1
 1
 WEFC 0
 WEJC 0
 WFHL 0
 WGGN 0
 WHBR 0
 WHFT 3
 3
 WHMB 8
 7
 WHME 0
 0
 WHTN 0
 WKBS 0
 WKOI 1
 1
 WLCN 0
 WLLA 0
 WLXI 0
 WLYJ 0
 1
 WMCF 0
 WOAY 0
 0
 WPCB 5
 5
 WRDG 0
 WSFJ 0
 WSWs 0
 WTBY 1
 0
 WTGL 0
 WTJC 1
 1

1987

KDTX 0
 KFCB 2
 2
 KITU 0
 KLUJ 0
 KNAT 0
 KNLC 0
 KPAZ 0
 KTBN 3
 1 + 1 pt
 KTBO 1
 1
 KTBW 1
 0
 KYFC 3
 0
 WCFC 5
 4
 WCLF 1
 2
 WDLI 0
 0
 WEFC 0
 WEJC 0
 WFHL 0
 WGGN 0
 WHBR 0
 WHFT 3
 2
 WHMB 7
 6
 WHME 1
 1
 WHTN 0
 WKBS 0
 WKOI 1
 1
 WLCN 0
 WLLA 0
 WLXI 0
 WLXJ 0
 1
 WMCF 0
 WOAY 3
 0
 WPCB 6
 3
 WRDG 0
 WSFJ 0
 WSWs 0
 WTBY 0
 0
 WTGL 0
 WTJC 1
 1

SETTLING DEVOTIONAL CLAIMANTS
Cross-Exam Exhibit No. _____
Page 2 of 2

1986

WTJR 0
WTKK 1
1
WTLJ 0
WTSF 0

=====

1986-1 34
1986-2 33

1987

WTJR 0
WTKK 0
0
WTLJ 0
WTSF 0

=====

1987-1 38
1987-2 25+1

* * *

- o 23.5% fewer systems in 1987-2 than 1986-1
- o 26.5% fewer full-time systems in 1987-2 than 1986-1